Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Customs and Patent Appeals and the United States Customs Court

Vol. 14 MARCH 5, 1980 No. 10

This issue contains

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

The abstracts, rulings, and notices which are issued weekly by the U.S. Customs Service are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Logistics Management Division, Washington, D.C. 20229, of any such errors in order that corrections may be made before the bound volumes are published.

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U.S. Customs Service

Treasury Decisions

T.D. 80–69

Foreign Currencies—Daily Rates For Countries Not On Quarterly List

Rates of exchange based on rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Brazil cruzeiro, People's Republic of China yuan, Hong Kong dollar, Iran rial, Philippines peso, Singapore dollar, Thailand baht (tical) and Venezuela bolivar

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to part 159, subpart C, Customs regulations (19 CFR 159, subpart C).

Brazil cruzeiro:	
February 4–8, 1980	$. 0228
People's Republic of China yuan:	
February 4–8, 1980	$0. 666711
Hong Kong dollar:	
February 4, 1980	$0. 206954
February 5, 1980	. 205888
February 6, 1980	. 205550
February 7, 1980	. 204918
February 8, 1980	. 205550
Iran rial:	
February 4–8, 1980	Not available
Phillipines peso:	
February 4–7, 1980	$0. 1355
February 8, 1980	. 1350
Singapore dollar:	
February 4, 1980	$0. 463499
February 5, 1980	. 464145
February 6, 1980	. 464468
February 7–8, 1980	. 464360

Thailand baht (tical):
February 4–8, 1980 ..... $0. 048875
Venezuela bolivar:
February 4–8, 1980 ..... $0. 2329

(LIQ-3-TRODE)

Dated: February 13, 1980.

G. SCOTT SHREVE,
Acting Director,
Duty Assessment Division.

(T.D. 80-70)

Notice of Recordation of Trade Name

COLT COMMUNICATIONS

On January 10, 1979, there was published in the Federal Register (44 F.R. 2217) a notice of application for the recordation under section 42 of the act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name Colt Communications, Inc. The notice advised that prior to final action on the application, filed pursuant to section 133.12, Customs regulations (19 CFR 133.12), consideration would be given to relevant data, views, or arguments submitted in opposition to the recordation and received not later than 30 days from the date of publication of the notice.

The name "Colt Communications" is hereby recorded as the trade name of Colt Communications, a corporation organized under the laws of the State of Illinois, located at 5424 West Touhy Avenue, Skokie, Ill. 60077, when applied to citizen band two-way radio transceivers manufactured in Japan and Korea. No foreign firm is authorized to use the trade name sought to be recorded.

Dated: February 13, 1980.

HARVEY B. FOX,
Acting Director, Office of
Regulations and Rulings.

(T.D. 80–71)

Bonds

Approval and discontinuance of consolidated aircraft bonds (air carrier blanket bonds) Customs Form 7605

The following consolidated aircraft bonds have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented by figures in parentheses immediately following, which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at the end of the list.

Dated: February 12, 1980.

Name of principal and surety	Date term commences	Date of approval	Filed with area director of Customs; amount
British Caledonian Airways, Ltd., London Airport—Gatwick, Horley, Surrey, England; American Home Assurance Co. D 4/1/80	Mar. 15, 1976	Apr. 1, 1976	Miami, FL; $100,000
Icelandic Airlines, Inc., J.F.K. Airport, Jamaica, NY; Federal Ins. Co. (PB 12/30/71) D 1/15/80 [1]	Dec. 28, 1979	Dec. 29, 1979	J.F.K. Airport; $100,000

[1] Surety is St. Paul Fire & Marine Insurance Co.

The foregoing principal has been designated as a carrier of bonded merchandise.

BON–3–01

HARVEY B. FOX
(For Donald W. Lewis, *Director*,
Office of Regulations and Rulings).

(T.D. 80–72)

Manmade Fiber Textile Products—Restriction on Entry

Restriction on entry of manmade fiber textile products manufactured or produced in Haiti

There is published below a directive of January 28, 1980, received by the Commissioner of Customs from the chairman, Committee for the Implementation of Textile Agreements, concerning restriction on

entry of manmade fiber textile products in categories 632 and 649 manufactured or produced in Haiti. This directive amends, but does not cancel, that committee's directive of November 7, 1979 (T.D. 80–31).

This directive was published in the Federal Register on January 31, 1980 (45 F.R. 6984), by the committee.

(QUO–2–1)

Dated: February 14, 1980.

WILLIAM D. SLYNE
(For G. Scott Shreve, Acting
Director, Duty Assessment Division).

U.S. DEPARTMENT OF COMMERCE,
THE ASSISTANT SECRETARY FOR INDUSTRY AND TRADE,
Washington, D.C. January 28, 1980.

Committee for the Implementation of Textile Agreements

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C.

DEAR MR. COMMISSIONER: This directive further amends, but does not cancel, the directive issued to you on November 7, 1979, by the chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton and manmade fiber textile products, produced or manufactured in Haiti.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 17, 1979, between the Governments of the United States and Haiti; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on January 28, 1980, and for the 12-month period which began on May 1, 1979, and extends through April 30, 1980, entry into the United States for consumption and withdrawal from warehouse for consumption of manmade fiber textile products in categories 632 and 649, produced or manufactured in Haiti, in excess of the following amended 12-month levels of restraint:

Category	*Amended 12 month level of restraint* [1]
632	1,557,924 dozen pairs
649	1,062,198 dozen

[1] The levels of restraint have not been adjusted to reflect any imports after Apr. 30, 1979.

The actions taken with respect to the Government of Haiti and with respect to imports of manmade fiber textile products from Haiti have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

PAUL T. O'DAY,
Chairman, Committee for the Implementation of Textile Agreements.

(T.D. 80–73)

Cotton, Wool, and Manmade Fiber Textile Products—Restriction on Entry

Restriction on entry of cotton, wool, and manmade fiber textile products manufactured or produced in Macau

There is published below a directive of January 25, 1980, received by the Commissioner of Customs from the chairman, Committee for the Implementation of Textile Agreements, concerning restriction on entry of cotton, wool, and manmade fiber textile products in various categories manufactured or produced in Macau.

This directive was published in the Federal Register on January 30, 1980 (45 F.R. 6826), by the Committee.

(QUO–2–1)

Dated: February 14, 1980.

WILLIAM D. SLYNE
(For G. Scott Shreve, Acting
Director, Duty Assessment Division).

U.S. DEPARTMENT OF COMMERCE,
INTERNATIONAL TRADE ADMINISTRATION,
Washington, D.C., January 25, 1980.

Committee for the Implementation of Textile Agreements

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C.

DEAR MR. COMMISSIONER: Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of November 29 and December 18, 1979, between the Governments of the United States and Portugal; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on February 1, 1980, and for the 12-month period beginning on January 1, 1980, and extending through December 31, 1980, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, and manmade fiber textile products in the following categories, produced or manufactured in Macau, in excess of the indicated levels of restraint:

Category	*12-month level of restraint*
333/334/335	80,654 dozen of which not more than 45,000 dozen shall be in category 333/335
338	114,755 dozen
339	488,254 dozen
340	110,000 dozen
341	70,948 dozen
347/348	262,000 dozen
445/446	67,914 dozen
633/634/635	183,458 dozen
641	65,498 dozen
647/648	200,152 dozen
659	203,724 dozen

In carrying out this directive, entries of textile products in the foregoing categories, except categories 339 and 659, which have been exported to the United States prior to January 1, 1980, shall, to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during the 12-month period beginning on January 1, 1979, and extending through December 31,

1979. In the event that the levels of restraint established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter. Textile products in categories 339 and 659 which have been exported prior to January 1, 1980, shall not be subject to this directive.

Textile products in categories 339 and 659 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The levels of restraint set forth above are subject to adjustment in the future pursuant to the provisions of the bilateral agreement of November 29 and December 18, 1979, which provide, in part, that: (1) Within the aggregate and applicable group limits, specific levels of restraint may be exceeded by designated percentages; (2) these same levels may be increased for carryover and carryforward up to 11 percent of the applicable category limit; (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any appropriate adjustments under the provisions of the bilateral agreement referred to above will be made to you by letter.

A detailed description of the textile categories in terms of TSUSA numbers was published in the Federal Register on January 4, 1978 (43 F.R. 884), as amended on January 25, 1978 (43 F.R. 3421), March 3, 1978 (43 F.R. 8828), June 22, 1978 (43 F.R. 26773), September 5, 1978 (43 F.R. 39408), January 2, 1979 (44 F.R. 94), March 22, 1979 (44 F.R. 17545), April 12, 1979 (44 F.R. 21843), and December 20, 1979 (44 F.R. 75441).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of Portugal and with respect to imports of cotton, wool, and manmade fiber textile products from Macau have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

PAUL T. O'DAY,
Chairman, Committee for the
Implementation of Textile Agreements.

(T.D. 80–74)

Cotton, Wool, and Manmade Fiber Apparel Products—Restriction on Entry

Restriction on entry of cotton, wool, and manmade fiber apparel products manufactured or produced in Indonesia

There is published below a directive of February 1, 1980, received by the Commissioner of Customs from the chairman, Committee for the Implementation of Textile Agreements, concerning visa requirements on cotton, wool, and manmade fiber apparel products in certain categories manufactured or produced in Indonesia

This directive was published in the Federal Register on February 6, 1980 (45 F.R. 8084), by the committee.

(QUO–2–1)

Dated: February 14, 1980.

WILLIAM D. SLYNE
(For G. Scott Shreve, Acting
Director, Duty Assessment Division).

U.S. DEPARTMENT OF COMMERCE,
THE ASSISTANT SECRETARY FOR INDUSTRY AND TRADE,
Washington, D.C., February 1, 1980.

Committee for the Implementation of Textile Agreements

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C.

DEAR MR. COMMISSIONER: In accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on March 15, 1980, and until further notice, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, and manmade fiber apparel products in categories 330–359, 431–459, and 630–659, produced or manufactured in the Republic of Indonesia and exported on and after March 1, 1980, for which the Government of the Republic of Indonesia has not issued an appropriate export visa, fully described below. Merchandise exported before the effective date of this directive shall not be denied

entry for consumption, or withdrawal from warehouse for consumption in the United States until June 15, 1980.

The export visa will be a rectangular stamp in blue ink on the front of the invoice (Special Customs Invoice Form 5515, successor document, or commercial invoice when that form is used) and will be signed by an official of the Government of the Republic of Indonesia. A facsimile of the visa stamp is enclosed.

You are directed to permit entry into the United States for consumption and withdrawal from warehouse for consumption of designated shipments of cotton, wool, and/or manmade fiber textile products, produced or manufactured in the Republic of Indonesia, notwithstanding the designated shipment or shipments do not fulfill the aforementioned visa requirements, whenever requested to do so in writing by the Committee for the Implementation of Textile Agreements.

A detailed description of the textile caregories in terms of TSUSA numbers was published in the Federal Register on January 4, 1978 (43 F.R. 884), as amended on January 25, 1978 (43 F.R. 3421), March 3, 1978 (43 F.R. 8828), June 22, 1978 (43 F.R. 26773), September 5, 1978 (43 F.R. 39408), January 2, 1979 (44 F.R. 94), March 22, 1979 (44 F.R. 17545), and April 12, 1979 (44 F.R. 21843), and December 20, 1979 (44 F.R. 75441).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of the Republic of Indonesia and with respect to imports of cotton, wool, and manmade fiber textile products from the Republic of Indonesia have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

PAUL T. O'DAY,
Chairman, Committee for the
Implementation of Textile Agreements.

Enclosure.

Visa for Cotton, Wool, and Manmade Fiber Apparel Exported to the United States from the Republic of Indonesia

Republic of Indonesia Textile Export Visa No.:---------- Date:---------- ---------- Signature

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(T.D. 80–75)

Customs Delegation Order No. 60

Order of Commissioner of Customs establishing an order of succession of persons to act as Commissioner of Customs

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., February 7, 1980.

By virtue of the authority vested in me by Treasury Department Order No. 129, Revision No. 2, dated April 22, 1955 (20 F.R. 2875), it is hereby ordered that the following officers of the U.S. Customs Service, in the order of succession enumerated, shall act as Commissioner of Customs, in the event of an enemy attack or during the absence or disability of the Commissioner of Customs, or when there is a vacancy in such office:

1. The Deputy Commissioner of Customs.
2. The Assistant Commissioner (Border Operations).
3. Comptroller.
4. The Assistant Commissioner (Commercial Operations).
5. Assistant Commissioner (Management Integrity).

By virtue of authority vested in me by said Treasury Department Order No. 129 (revision No. 2), and Treasury Department Order No. 165, Revised (T.D. 53654; 19 F.R. 7241), there is hereby delegated to the Regional Commissioners of Customs, district directors of Customs, and port directors of Customs, in the event of an enemy attack on the continental United States, authority to perform any function of the Commissioner of Customs which is necessary to insure continuous performance of essential functions otherwise assigned to such officers.

This delegation of authority will remain in effect until notice has been received from proper authority that it has been terminated.

This order supersedes Customs Delegation Order No. 52, dated October 10, 1975 (T.D. 75–260; 40 F.R. 48701).

R. E. CHASEN,
Commissioner of Customs.

U.S. Customs Service

General Notice

Improving Government Regulations—Semiannual Agenda

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Semiannual agenda.

SUMMARY: In response to Executive Order 12044, "Improving Government Regulations," and the Treasury Department directive implementing that Executive order, Customs has prepared and is publishing for public information a list of significant regulations either under development or under review.

FOR FURTHER INFORMATION CONTACT: For additional information regarding any particular regulatory project described in agenda, communicate with the person identified as the "Contact." Comments or inquiries of a general nature should be directed to: Todd J. Schneider, Regulations and Research Division, Office of Regulations and Rulings, U.S. Customs Service, room 2335, 1301 Constitution Avenue NW., Washington, D.C. 20229; 202–566–8237.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On November 8, 1978, the Department of the Treasury published a report in the Federal Register (43 F.R. 52120) to implement Executive Order 12044. The report included a directive that each Treasury bureau or office shall publish a semiannual agenda of significant regulations either under development or under review. The agenda is to describe each regulatory project (project) being considered, the need for and legal basis for the action being taken, the name and telephone number of a knowledgeable agency official, and whether a regulatory analysis will be prepared. In addition, subsequent agendas will show the status of projects referred to in the previously published agenda. A notice published in the preliminary pages of the Federal Register on October 10, 1978 (43 F.R. xii), provides that Customs will publish its semiannual agenda on February 1 and August 1 of each year.

The following is the third semiannual agenda to be published by Customs. It has been determined that none of the projects listed will require a regulatory analysis under the criteria set out in the Executive order and implementing Treasury directive.

General statutory authority for the development or review of regulations relating to Customs matters is found in section 301, title 5, United States Code (5 U.S.C. 301), and in sections 66 and 1624, title 19, United States Code (19 U.S.C. 66, 1624). When appropriate, specific statutory authority is indicated after the description of each project.

In accordance with the Treasury directive implementing Executive Order 12044, no action, other than preliminary studies, may be taken on any project commenced after May 22, 1978, without secretarial approval of a "work plan". Work on many of the described projects commenced before May 22, 1978, and, therefore, no work plan will be prepared. For these projects, and others which are in an early stage of preparation, no work plans are available to the public. However, projects which either have had work plans approved or are the subject of documents published in the Federal Register (F.R.) as an advance notice of proposed rulemaking (ANPRM), a notice of proposed rulemaking (NPRM), or a final rule—Treasury decision (T.D.), are identified by work plan number or Federal Register citation. Approved work plans are available to the public under the provisions of the Freedom of Information Act, as amended (5 U.S.C. 552), and part 103, Customs Regulations (19 CFR part 103). Requests should be addressed to the Freedom of Information and Privacy Branch, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229.

By direction of the Secretary of the Treasury.

Dated: February 13, 1980.

R. E. CHASEN,
Commissioner of Customs.

CUSTOMS SERVICE—SEMIANNUAL AGENDA

Part I—Regulations Under Development

Title/citation (19 CFR —)	*Summary*
Vessels; drawback/parts 4 and 22.	*Description:* Conform regulations relating to Panama Canal Zone to provisions of Panama Canal Treaty. *Need:* Amendments required by Treaty of Sept. 7, 1977, "Panama Canal Treaty." *Authority:* 19 U.S.C. 1466. *Contact:* Donald H. Reusch, 202–566–5706. *Status:* T.D. 79–276, published Oct. 29, 1979 (44 F.R. 61954).

CUSTOMS SERVICE—SEMIANNUAL AGENDA

Part I—Regulations Under Development

Title/citation (19 CFR —)	*Summary*
Public gaugers—petroleum/parts 4 and 151.	*Description:* Insure maintenance of reliable statistics by implementing standardized guidelines and procedures for monitoring imports of petroleum and petroleum products. *Need:* Implement recommendations of Customs Petroleum Task Force. *Authority:* 19 U.S.C. 1202. *Contact:* Alice Rigdon, 202–566–5354. *Status:* Work plan 79–27 approved; NPRM published Dec. 21, 1979 (44 F.R. 75684); Treasury decision under development.
Vessels; foreign repairs/parts 4.7 and 4.14.	*Description:* Revision of requirements and procedures for handling entries relating to foreign repairs and equipment purchases by U.S. vessels. *Need:* To expedite processing of entries. *Authority:* 19 U.S.C. 1466, 1498, 1514. *Contact:* James Fritz, 202–566–5706. *Status:* NPRM published Apr. 4, 1978 (43 F.R. 14060); Treasury decision under development.
Vessels; navigation fees/part 4.98.	*Description:* Amend fee schedule under which Customs charges and collects fees for specific services provided to vessels. *Need:* To implement provisions of Public Law 95–410, "Customs Procedural Reform and Simplification Act of 1978." *Authority:* 31 U.S.C. 483a. *Contact:* Jerry Laderberg, 202–566–5706. *Status:* NPRM published May 25, 1979 (44 F.R. 30375); T.D. 80–25, published Jan. 18, 1980 (45 F.R. 3570).
Vessels; forms substitution/part 4.99.	*Description:* Authorize printing of Customs forms used in connection with the entry and clearance of vessels by private parties and foreign governments on metric A–4 size paper. *Need:* To further U.S. policy regarding metric system and to facilitate international commerce. *Authority:* General. *Contact:* John Mathis, 202–566–5706. *Status:* Work plan 79–9 approved; T.D. 79–255 published Oct. 4, 1979 (44 F.R. 57087).

CUSTOMS SERVICE—SEMIANNUAL AGENDA

Part I—Regulations Under Development

Title/citation (19 CFR —)	*Summary*
Air commerce/parts 6, 10, and others.	*Description:* Establish new rules for (1) duty-free trade in civil aircraft and parts for civil aircraft, and (2) dutiability of foreign repairs to, and foreign purchases of parts and materials for, U.S.-registered civil aircraft. *Need:* To implement title VI, Civil Aircraft Agreement, of Public Law 96–39, "Trade Agreements Act of 1979." *Authority:* General. *Contact:* John Mathis, 202–566–5706. *Status:* Work plan 79–30 approved; NPRM published Jan. 8, 1980 (45 F.R. 1633).
Air commerce/parts 6.3 and 6.8	*Description:* Simplification and clarification of aircraft clearance procedures. *Need:* To facilitate clearance of aircraft departing U.S. *Authority:* 49 U.S.C. 1509. *Contact:* John Mathis, 202–566–5706. *Status:* Work plan 79–6 approved; Treasury decisions under development.
Petroleum/part 10	*Description:* Regulation of petroleum exports from Canada. *Need:* Conforming amendment required by Public Law 95–159. *Authority:* General. *Contact:* G. Scott Shreve, 202–566–5307. *Status:* Treasury decision under development.
Endangered species—antiques/parts 10 and 12.	*Description:* Provide for importation of specified antique articles otherwise prohibited entry by Endangered Species Act of 1973 at designated ports of entry. *Need:* Implement provisions of Public Law 95–632, "Endangered Species Act Amendments of 1978." *Authority:* 19 U.S.C. 1202. *Contact:* Harrison Feese, 202–566–8651. *Status:* Work plan 79–28 approved; NPRM under joint development by Customs and Fish and Wildlife Service.

313-579 0 - 79 - 3

Customs Service—Semiannual Agenda

Part I—Regulations Under Development

Title/citation (19 CFR —)	*Summary*
Conforming amendments/parts 10, 12, and others.	*Description:* Conform regulations to provisions of various titles of Public Law 96–39, "Trade Agreements Act of 1979." *Need:* Miscellaneous amendments required by the Trade Agreements Act of 1979. *Authority:* General. *Contact:* Benjamin Mahoney, 202–566–765. *Status:* Work plan 79–31 approved; Treasury decision under development.
Carnets (E.C.S./A.T.A.)/parts 10 and 114.	*Description:* Substitute use of ATA carnet for ECS carnet in relation to the entry of commercial samples. *Need:* U.S. withdrawal from Customs Convention on ECS carnets (TIAS 6632) and accession to the Convention on ATA carnets (TIAS 6631). *Authority:* General. *Contact:* Jerrald Worley, 202–566–8607. *Status:* Treasury decision under development.
Entry of noise-emitting merchandise; standards and labeling/part 12.	*Description:* Regulations to administer the EPA noise emission standard and labeling requirements on certain imported merchandise. *Need:* To implement provisions of Public Law 92–572, "Noise Control Act of 1972." *Authority:* General. *Contact:* Harrison Feese, 202–566–8651. *Status:* NPRM under joint development by Customs and EPA.
Importation of motor vehicles/part 12.73	*Description:* Conform regulations governing importation of motor vehicles under Clean Air Act to proposed EPA amendments on Federal emission standards. *Need:* To implement provisions of "Clean Air Act of 1955" as amended by Public Law 95–95. *Authority:* 19 U.S.C. 1484. *Contact:* Harrison Feese, 202–566–8651. *Status:* NPRM under joint development by Customs and EPA.

CUSTOMS SERVICE—SEMIANNUAL AGENDA

Part I—Regulations Under Development

Title/citation (19 CFR —)	*Summary*
Entry of electronic products/parts 12.90 and 12.91.	*Description:* Implement FTC labeling requirements for certain imported electronic products. *Need:* Required by provisions of Public Law 93–523, "Public Health Service Act." *Authority:* General. *Contact:* Darrell Kast, 202–566–5765. *Status:* NPRMs published Sept. 5, 1975 (40 F.R. 41118) and July 27, 1976 (41 F.R. 31223); procedures under joint development by Customs and FTC.
Entry of energy-using products; labeling/part 12.92.	*Description:* Implement FTC labeling requirements for certain imported energy-using products. *Need:* Required by provisions of Public Law 94–163, "Energy Policy Conservation Act." *Authority:* General. *Contact:* Harrison Feese, 202–566–8651. *Status:* NPRM under joint development by Customs and FTC.
In-bond transportation of merchandise/parts 18, 123, and 144.	*Description:* Change time limits and other rules relating to in-bond transportation of merchandise. *Need:* To give Customs greater control over merchandise transported in bond. *Authority:* 19 U.S.C. 1552, 1553, 1557, 1623. *Contact:* J. Bradley Lund, 202–566–5354. *Status:* NPRM published Aug. 13, 1976 (41 F.R. 34271); Treasury decision under development.
Transportation in bond/part 18.8..	*Description:* Increase amount of liquidated damages required by carrier's bond for shortage, failure to deliver or irregular delivery of duty-free merchandise. Carrier also would be liable for duty on dutiable merchandise, as well as liquidated damages. *Need:* To clarify carrier's obligations under required bond and provide for liquidated damages as deterrent to violations. *Authority:* 19 U.S.C. 1551, 1623. *Contact:* William Rosoff, 202–566–5856. *Status:* Work plan 79–11 approved; NPRM under development.

CUSTOMS SERVICE—SEMIANNUAL AGENDA

Part I—Regulations Under Development

Title/citation (19 CFR —)	*Summary*
Drawback; identification of entries/ part 22.	*Description:* Require drawback entries be identified at time of entry. *Need:* To reduce delays in processing drawback claims. *Authority:* 19 U.S.C. 1313; 31 U.S.C. 483a. *Contact:* George Steuart, 202–566–8453. *Status:* ANPRM under development.
Drawback; bulk-fungible goods/ part 22.5.	*Description:* Allow drawback without actual use of bulk-fungible goods if substituted for goods of same kind/quality. *Need:* To extend to other articles privileges now applicable to petroleum products. *Authority:* General. *Contact:* Donald Beach, 202–566–5856. *Status:* Action on NPRM suspended pending economic analysis and study as to whether legislation is required.
Entry of merchandise/parts 24, 141, 142, 144.	*Description:* To reduce the 10-working day period during which estimated duties must be deposited after merchandise is released under an entry or a permit for immediate delivery. *Need:* To improve the Government's cash flow by earlier collection of duties. *Authority:* 19 U.S.C. 1484, 1505, 1557. *Contact:* Benjamin Mahoney, 202–566–5765. *Status:* Possibility of accelerated duty payment remains under study.
Customs accounting procedure: Bonds/parts 24 and 113.	*Description:* Charge interest on delinquent accounts of importers and others with Customs. *Need:* To encourage importers to pay Customs bills promptly and thereby improve cash flow. *Authority:* 19 U.S.C. 1623. *Contact:* Robert B. Hamilton, 202–566–2598. *Status:* Work plan in review in Customs.

CUSTOMS SERVICE—SEMIANNUAL AGENDA

Part I—Regulations Under Development

Title/citation (19 CFR —)	*Summary*
Port of entry limits/part 101.3	*Description:* Extend port of entry limits of Brownsville, Tex. *Need:* To improve service to public. *Authority:* 19 U.S.C. 2; Executive Order 10289. *Contact:* Robert Schenarts, 202–566–8151. *Status:* NPRM published Feb. 9, 1979 (44 F.R. 8276); T.D. 79–254 published Oct. 4, 1979 (44 F.R. 57088).
New Customs district/part 101.3	*Description:* Establish Customs district at Dallas-Fort Worth, Tex. *Need:* To improve service to public. *Authority:* 19 U.S.C. 2; Executive Order 10289. *Contact:* Robert Schenarts, 202–566–8151. *Status:* NPRM published Aug. 15, 1978 (43 F.R. 36108); T.D. 79–232 published Aug. 20, 1979 (44 F.R. 48671).
Customhouse brokers/part 111	*Description:* Amend regulations relating to responsibilities of customhouse brokers. *Need:* To clarify responsibilities of customhouse brokers and to ensure uniform compliance with applicable regulations. *Authority:* 19 U.S.C. 1641. *Contact:* Edward B. Gable, Jr., 202–566–8047. *Status:* Action on work plan 79–5 suspended pending review of related legislative proposals.
Carriers of bonded merchandise/part 112.11.	*Description:* Revise criteria for designating private carriers of bonded merchandise to require only that they file bonds and transport their own property. *Need:* To lessen restrictions of prior regulation. *Authority:* 19 U.S.C. 1551. *Contact:* Donald Beach, 202–566–5856. *Status:* Work plan 79–10 approved; NPRM under development.

CUSTOMS SERVICE—SEMIANNUAL AGENDA

Part I—Regulations Under Development

Title/citation (19 CFR —)	*Summary*
Customs bonds/part 113	*Description:* Consolidation of Customs bonds and related forms. *Need:* To simplify bond structure and language preparatory to expansion of AMPS program. *Authority:* 19 U.S.C. 1623. *Contact:* Joseph Goody, 202–566–2974. *Status:* ANPRM under development.
Customs bonds, letter of credit/part 113.	*Description:* Authorize use of letter of credit in lieu of foreign-trade zone bond to guarantee payment of claims made by Customs against a foreign-trade zone operator. *Need:* To facilitate use of foreign-trade zones. *Authority:* 19 U.S.C. 81c, 1623. *Contact:* William Rosoff, 202–566–5856. *Status:* NPRM under development (consolidated with "Trade fairs," 147.45, below).
Contiguous countries; manifest discrepancies/part 123.9.	*Description:* Establish uniform procedures for handling manifest discrepancies of vehicles and certain vessels arriving from contiguous countries. *Need:* To facilitate entry of vessels and vehicles from Canada or Mexico. *Authority:* General. *Contact:* Donald Reusch, 202–566–5706. *Status:* NPRM published July 28, 1978 (43 F.R. 32817); Treasury decision under development.
Contiguous countries; railroad equipment/part 123.12.	*Description:* Admission of empty foreign railroad equipment without entry and payment of duty in certain instances. *Need:* To clarify permitted use of foreign railroad equipment. *Authority:* General. *Contact:* Michael Tomenga, 202–566–5706. *Status:* Work plan 79–18 under development.

CUSTOMS SERVICE—SEMIANNUAL AGENDA

Part I—Regulations Under Development

Title/citation (19 CFR —)	*Summary*
Contiguous countries; manifest validation/parts 123.41 and 123.42.	*Description:* Require truck driver carrying merchandise between the United States and Canada to present manifest for validation by U.S. Customs at U.S. port of departure. *Need:* Jointly initiated by United States and Canadian Customs to prevent evasion of duty when merchandise reenters the United States from Canada on in-transit documentation. *Authority:* 19 U.S.C. 1553, 1554. *Contact:* J. Bradley Lund, 202–566–5354. *Status:* NPRM published Dec. 9, 1976 (41 F.R. 53810); new NPRM under development.
Copyrights/part 133	*Description:* Amendments to regulations relating to recordation of copyrights with Customs. *Need:* To implement provisions of Public Law 94–533, "Copyright Act of 1976." *Authority:* 17 U.S.C. 1603. *Contact:* Samuel Orandle, 202–566–5765. *Status:* NPRM under joint development by Customs and Copyright Office.
Entry of merchandise; special permits for immediate delivery/parts 141 and 142.	*Description:* Revise consumption entry (Customs form 7501) to accommodate new entry procedures. *Need:* To implement provisions of Public Law 95–410, "Customs Procedural Reform and Simplification Act of 1978." *Authority:* 19 U.S.C. 1484. *Contact:* William Wagner, 202–566–5307. *Status:* Request for comments on the proposed form published May 23, 1979 (44 F.R. 29916); comments under review at Customs.
Entry and liquidation/parts 141, 142, and others.	*Description:* Amendments relating to the entry and liquidation of merchandise. *Need:* To implement provisions of Public Law 95–410, "Customs Procedural Reform and Simplification Act of 1978." *Authority:* 19 U.S.C. 467, 1315, 1484, 1504, 1505, 1520, 1559. *Contact:* Herbert Geller, 202–566–5307. *Status:* NPRM published Nov. 29, 1978 (44 F.R. 55774), T.D. 79–221 published Aug. 9, 1979 (44 F.R. 46794).

CUSTOMS SERVICE—SEMIANNUAL AGENDA

Part I—Regulations Under Development

Title/citation (19 CFR —)	*Summary*
Entry of merchandise/part 141.89	*Description:* To revise the additional information required on entry of footwear. *Need:* To assist Customs in the appraisement and classification of imported footwear. *Authority:* 19 U.S.C. 1202, 1481, 1484. *Contact:* Linda Mays, 202–566–2957. *Status:* NPRM published July 28, 1978 (43 F.R. 32819); after consideration of comments, a second NPRM under development.
Informal entries/part 143.23	*Description:* Provide for use of Customs form 7523 for informal entry of noncommercial, duty-free merchandise, regardless of value. *Need:* Public benefit and Customs convenience. *Authority:* General. *Contact:* Drury Williford, 202–566–5354. *Status:* Work plan 79–17 approved; T.D. 80–10 published Jan. 4, 1980 (45 F.R. 1012).
Foreign-trade zones/part 146.48	*Description:* Change of appraisement practice involving costs of processing and profit for certain merchandise produced in foreign-trade zones. *Need:* To encourage use of domestic labor and materials in foreign-trade zones. *Authority:* 19 U.S.C. 81h. *Contact:* Thomas Lobred, 202–566–2938. *Status:* NPRM published May 21, 1979 (44 F.R. 29489); Treasury decision in review at Treasury Department.
Trade fairs/part 147.45	*Description:* Removal of trade fair merchandise from foreign-trade zones for consumption without permission of Foreign-Trade Zones Board. *Need:* Amendments required to implement provisions of Public Law 91–692. *Authority:* 19 U.S.C. 81h. *Contact:* William Rosoff, 202–566–5856. *Status:* NPRM under development (consolidated with "Customs bonds, letter of credit," part 113, above).

CUSTOMS SERVICE—SEMIANNUAL AGENDA

Part I—Regulations Under Development

Title/citation (19 CFR —)	*Summary*
Registration of merchandise/part 148.1.	*Description:* New instructions for registration of personal effects taken abroad. *Need:* To insure uniform registration procedures. *Authority:* 19 U.S.C. 1498. *Contact:* Bernard Harris, 202–566–5354. *Status:* Work plan under development.
Personal declarations and exemptions/part 148.73.	*Description:* Execution of written baggage declarations by military personnel. *Need:* To conform Customs and DOD regulations. *Authority:* General. *Contact:* Donald Thompson, 202–566–5607. *Status:* NPRM under development.
Examination of merchandise/part 151.2.	*Description:* Expand accelerated cargo clearance and entry processing test (ACCEPT), an automated selective merchandise examination system, to various ports of entry. *Need:* Facilitate movement of merchandise by fewer but more intensive examinations. *Authority:* 19 U.S.C. 1202, 1499. *Contact:* Michael Lanoue, 202–566–8651. *Status:* Work plan 79–20 approved; NPRM in review at Treasury Department.
Appraisement of merchandise/part 152.	*Description:* Amendments required by new International Valuation Code agreed to in multilateral trade negotiations. *Need:* To implement title II, Customs Valuation, of Public Law 96–39, "Trade Agreements Act of 1979." *Authority:* General. *Contact:* Thomas Lobred, 202–566–2938. *Status:* Work plan 79–26 approved; NPRM under review at Treasury Department.
Recordkeeping, inspection, search, and seizure/part 162.47.	*Description:* Waiver of bond requirements by district director for individuals who show proof of inability to obtain bond. *Need:* Decisions of U.S. Courts of Appeals, *Wiren* v. *Eide*, 542 F. 2d 757 (9 Cir. 1976), and *Lee & Rich* v. *Thornton*, 538 F. 2d 27 (2 Cir. 1976). *Authority:* General. *Contact:* Joseph Priddy, 202–566–5746. *Status:* T.D. under development.

CUSTOMS SERVICE—SEMIANNUAL AGENDA

Part I—Regulations Under Development

Title/citation (19 CFR —)	*Summary*
American manufacturer's petitions/ part 175.	*Description:* Reflect extension of procedures applicable to American manufacturer's petitions to cases involving antidumping and countervailing duties. *Need:* To implement provisions of Public Law 93–618, "Trade Act of 1974." *Authority:* 19 U.S.C. 1516. *Contact:* John Elkins, 202–566–8237. *Status:* Withdrawn in light of Reorganization Plan No. 3 of 1979 (44 F.R. 69273) and Executive Order 12188 (45 F.R. 989) transferring function to Commerce Department.

Part II—Existing Regulations To Be Reviewed

Title/citation (19 CFR —)	*Summary*
Bond/part 18	*Description:* Transportation in bond and merchandise in transit. *Need:* To insure consistency of format and style. *Contact:* James Seal, 202–566–8237. *Status:* Customs review of draft completed; NPRM under development.
Finance/part 24	*Description:* Customs financial and accounting procedure. *Need:* To insure consistency of format and style. *Contact:* James Seal, 202–566–8237. *Status:* Customs review of draft completed; NPRM under development.
Duties/parts 10 and 54	*Description:* Articles conditionally free, subject to reduced rate, etc., and certain importations temporarily free of duty. *Need:* To insure consistency of format and style. *Contact:* Jenny Johnson, 202–566–8237. *Status:* Customs review of draft completed; NPRM under development.
Freedom of Information/part 103	*Description:* Availability of information. *Need:* To conform to amendments to Freedom of Information Act made by Public Law 93–502. *Contact:* John Roth, 202–566–8237. *Status:* NPRM published Aug. 20, 1979 (44 F.R. 48709); Treasury decision under development.

CUSTOMS SERVICE—SEMIANNUAL AGENDA

Part II—Existing Regulations To Be Reviewed—Continued

Title/citation (19 CFR —)	*Summary*
Drawback/part 22	*Description:* Drawback. *Need:* To modernize procedures relating to claims for drawback. *Contact:* George Steuart, 202–566–5856. *Status:* Preliminary draft in Customs review.

U.S. Customs Service

Customs Service Decisions

The following are decisions made by the U.S. Customs Service where the issues involved are of sufficient interest or importance to warrant publication in the CUSTOMS BULLETIN.

Dated: February 15, 1980.

HARVEY B. FOX,
Acting Director,
Office of Regulations and Rulings.

(C.S.D. 80-16)

Bonds: When Single Entry Bond Rather Than Antidumping Bond May Be Filed To Cover Merchandise Subject To Dumping Finding

Date: June 26, 1979
File: BON-1-R:CD:D
210324 L

Issue.—A domestic company imports merchandise subject to a finding of dumping from a nonrelated supplier. May the importer file a single entry bond, Customs form (CF) 7551, to cover the requirements of section 208 of the Antidumping Act of 1921, as amended (19 U.S.C. 167), or is an antidumping bond, CF 7591, required.

Facts.—An inquirer states it understands the Customs Service has ruled that an importer can file a single entry bond (immediate delivery and consumption entry bond (single entry) CF 7551) in lieu of an antidumping bond (CF 7591) to cover any dumping duties which may accrue if the parties to the import transaction are not related.

The inquirer points out that it has sold its interest in one foreign supplier and is no longer related to it. It further points out that it is not related to any other supplier from which it imports merchandise.

It suggests that some confusion may arise from its relationship with its foreign service company which it wholly owns. The service

company acts as its agent. Title to goods is never vested in the service company nor is the service company represented as the seller of the invoiced items. However, the service company uses its own letterhead in preparing the import invoices which may make it appear they are the actual supplier when they are not.

The inquirer requests a ruling as to whether it should file a single entry bond or an antidumping bond.

Law and analysis.—Section 207 of the Antidumping Act of 1921, as amended (19 U.S.C. 166), (the act) defines an exporter as follows:

> For the purposes of sections 160–171 of this title, the exporter of imported merchandise shall be the person by whom or for whose account, the merchandise is imported into the United States:
>
> (1) If such person is the agent or principal of the exporter, manufacturer, or producer, or;
>
> (2) If such person owns or controls, directly or indirectly, through stock ownership or control or otherwise, any interest in the business of the exporter, manufacturer, or producer; or
>
> (3) If the exporter, manufacturer, or producer owns or controls, directly or indirectly, through stock ownership or control or otherwise, any interest in any business conducted by such person; or
>
> (4) If any person or persons, jointly or severally, directly or indirectly, through stock ownership or control or otherwise, own or control in the aggregate 20 per centum or more of the voting power or control in the business carried on by the person by whom or for whose account the merchandise is imported into the United States, and also 20 per centum or more of such power or control in the business of the exporter, manufacturer, or producer.

Section 208 of the act (19 U.S C. 167) requires an importer to post a bond to obtain merchandise covered by a dumping finding unless the importer declares that he is not the exporter or states the exporter's sales price of that merchandise. Section 208 also sets the terms of the required bond. The bond is to guarantee that the importer will report the exporter's sales price within 30 days after the sale or sales agreement is made. The bond also guarantees that any lawful antidumping duty will be paid, that any information needed for appraisement known to the importer will be furnished to Customs, and that the importer will maintain all required records.

Section 153.50, Customs Regulations (19 CFR 153.50), provides in part that:

> When the district director * * * has been advised of a finding provided for in 153.43 * * * he shall withhold release of any merchandise * * * which is then in his custody * * * unless an appropriate bond is filed or is on file, as specified in 153.51 * * *.

Section 153.51, Customs Regulations (19 CFR 153.51), specifies that a single consumption entry bond, in addition to any other required bond, shall be furnished by the person making the entry or withdrawal unless the resale price of the merchandise in the United States is unknown. If the resale price of the merchandise in the United States is unknown, the bond required by section 208 of the act is Customs form 7591 (antidumping bond), and a separate bond is required for each entry or withdrawal, and is in addition to any other bond required by law or regulation.

In *Lagerloef Trading Co. (Inc.)* v. *United States*, Treasury decision (T.D.) 46288 (Cust. Ct. 1933), it was held that where goods are imported as to which the Secretary of the Treasury has made a finding of dumping as provided in section 201 of the act (19 U.S.C. 160), the filing of the antidumping bond provided for in section 208 of that act and T.D. 45474 is not a condition precedent to the delivery of the goods, provided "the person by whom or for whose account such merchandise is imported makes oath before the collector (now appropriate Customs officer), under regulations prescribed by the Secretary, that he is not an exporter," or "that such person declares under oath at the time of entry, under regulations prescribed by the Secretary, the exporter's sales price of such merchandise."

The inquirer states it is not related to the foreign supplier of merchandise subject to a dumping finding and that its wholly owned foreign agent never takes title to the merchandise nor represents itself as the seller of the merchandise. Under these circumstances, and providing the person by whom or for whose account the merchandise is imported makes oath that he is not an exporter, or declares under oath at the time of entry the exporter's sales price, an antidumping bond on CF 7591 is not required.

The Customs Service is not aware of any prior administrative ruling on this issue.

Holding.—Where the person by whom for whose account merchandise subject to a finding of dumping is imported makes oath before the appropriate Customs officer that he is not an exporter or declares under oath at the time of entry the exporter's sales price of the merchandise, an antidumping bond on CF 7591 is not required. The merchandise may be released upon filing of a single consumption entry bond covering the shipment as provided in sections 153.50 and 153.51, Customs Regulations (19 CFR 153.50 and 153.51).

(C.S.D. 80-17)

Carrier Control: Applicability of Coastwise Laws to time Chartered Vessel

Date: June 26, 1979
File: VES-3-11-R:CD:C
104044 JL

This ruling concerns the chartering for profit of a private pleasure vessel.

Issues.—1. Where a vessel is time chartered to a motion picture company for the purpose of making a film, will the actors and film crew personnel be considered passengers within the meaning of section 4.50(b), Customs Regulations?

2. Where a vessel departs from a U.S. port carrying passengers and returns to the same port where the passengers disembark and the vessel has not touched at another port, will the cruise be considered as coming within the prohibition of the coastwise laws?

Facts.—A U.S. corporation which owns a vessel which is restricted from engaging in the coastwise trade proposes to enter into an agreement with a motion picture production corporation under which the vessel, a 40-foot sloop which is documented as a U.S. pleasure vessel, would be used to film a motion picture. The vessel would be captained by an employee of the owner. Approximately six actors and appropriate film crew personnel would be carried on board each morning during the charter period, returning each night to the same port in Maine. The vessel would not transport the actors or film crew to different ports nor would it provide overnight accommodations. In consideration for the use of the vessel, the film production company would agree to pay the owner a specified percentage of the profits to be derived from the film.

Law and analysis.—Title 46, United States Code, section 289, provides that no unqualified vessel shall transport passengers between ports and places in the United States, either directly or by way of a foreign port, under a penalty of $200 for each passenger so transported and landed. Section 4.50(b), Customs Regulations, defines a passenger as any person carried on a vessel who is not connected with the operation of such vessel, her navigation, ownership, or business.

In headquarters ruling of December 15, 1975, file VES-3-11, case No. 101933, it was held that where a vessel prohibited from engaging in the coastwise trade was time chartered to a motion picture studio to go out 20 miles each day for purposes of motion picture photography and return to the same port, such voyages would not be in violation of the coastwise laws even if the time charterer's employees were con-

sidered passengers and their equipment merchandise. The ruling defined coastwise trade as transportation of passengers of merchandise or both between points in the United States, or on a voyage to and from the same point if solely within the U.S. territorial waters.

In regard to the first issue presented, in the case where the owner of a yacht is paid to carry a person or persons on his vessel who are connected with the actual operation, navigation, ownership, or business of the vessel, the owner is considered to be transporting passengers within the meaning of section 289. Both the person who hired the yacht and the members of his party, that is, his guests (or, as in the present case, his employees), are considered passengers within the meaning of the law.

We therefore conclude that under the facts presented, the motion picture crew and actors would be considered passengers under the coastwise laws and if the yacht makes a voyage from a port in Maine wholly within U.S. territorial waters, that is, within the 3-mile limit, a transportation of such passengers would have occurred in contravention of 46 U.S.C. 289. Conversely, if on each voyage the vessel goes out beyond the 3-mile limit, no coastwise transportation will have occurred, and the fact that the employees of the time charterer would have been considered passengers under the coastwise laws will not subject the master of the vessel to a penalty thereunder.

Holding.—1. Where a motion picture company time charters a noncoastwise qualified yacht, actors and other members of the film crew carried on board the vessel would be considered passengers for purposes of 46 U.S.C. 289 and section 4.50(b) of the Customs Regulations.

2. Where a noncoastwise qualified vessel departs from a U.S. port and accomplishes a voyage entirely within U.S. territorial waters and returns to the same port, a violation of the coastwise laws will have occurred. Where the voyage extends at some point beyond the 3-mile limit, that is, outside U.S. territorial waters, no coastwise violation will have occurred, and the fact that persons carried on board would be considered passengers within the meaning of 46 U.S.C. 289 will be irrelevant.

Effect on other rulings.—None.

(C.S.D. 80–18)

Resident Exemption: Household Effects; Time Limit for Free Entry of Household Effects Following Nonresident's Last Arrival

Date: June 26, 1979
File: ENT–6–01–R:E:E
710614 MC

This ruling concerns the interpretation of the phrase "the last arrival" in 19 CFR 148.52(d).

Issue.—Whether the latest visit back to an immigrant's former residence in another country constitutes "the last arrival" within the meaning of 19 CFR 148.52(d).

Facts.—Inquirer moved from Montreal, Canada, to the United States in 1964, leaving behind his family's household goods. Since that time he has made a number of trips back to Montreal, including visits within the past 10 years. His parents are now planning to leave the apartment in which they have lived since before their son moved out and he would now like to import some household effects used for more than 1 year.

Law and analysis.—Customs Regulations 148.52(a) provides that "usual household furnishings and effects actually used abroad for not less than 1 year by residents or nonresidents, and not intended for any other person or for sale may be allowed entry free of duty and tax." Section 148.52(d) stipulates that "household effects arriving more than 10 years after the last arrival of the importer from the country in which they were used shall not be admitted free of duty."

This regulation is concerned with the date of the last arrival of the importer from the country in which the effects were used, rather than the date of the importer's last residence in such country. Accordingly, the 10-year period begins to run after the last trip back to the foreign country. Personal visits are included as delaying the commencement of the 10-year, duty-exemption period.

Holding.—Return from the most recent visit back to a former residence in a foreign country is considered "the last arrival" for section 148.52(d) purposes.

313-579 O - 79 - 5

(C.S.D. 80-19)

Entry: Time Limit Concerning Submission of Documentary Evidence Supporting Claims for Reliquidation Under 19 U.S.C. 1520(c)(1)

Date: June 26, 1979
File: ENT-1-01-R:E:E
710523 M

This ruling reviews a protest against a district director's determination that an entry could not be reliquidated pursuant to section 520(c)(1) of the Tariff Act of 1930, as amended, because, although the claim was timely made, the documentary evidence to substantiate such claim was not made within the time limits of section 520(c)(1).

Issue.—Must the documentary evidence, which substantiates a claim for reliquidation pursuant to section 520(c)(1), be submitted with the time limits prescribed by that section?

Facts.—An entry was filed on July 20, 1976, for radiators as parts for "leveling, boring, and extracting machinery" under item 664.05 of the Tariff Schedules at a duty rate of 5 percent ad valorem and was liquidated on August 13, 1976, as entered.

On October 10, 1976, the importer submitted a request for reliquidation of the entry pursuant to section 520(c)(1) of the Tariff Act of 1930, as amended (19 U.S.C. 520(c)(1)) because the shipper had erred in noting on the invoices which accompanied the merchandise that the imported radiator assemblies were to be used in "off-highway track vehicles, the manufacture of ski lifts and the manufacture of potato harvesters." The importer contended that the radiators were in fact to be used as parts for vehicles of a type which would qualify as "motor vehicles" within the purview of schedule 6, part 6, subpart B of the tariff schedules and thereby such radiators would qualify for duty-free entry. In addition, the importer submitted literature which depicted the use of the radiators in such vehicles. However, parts for such vehicles are not automatically accorded duty-free status. Documentary evidence as to its intended use, in accordance with section 10.84 of the Customs Regulations, must be submitted. Such documentary evidence was not submitted with this request. On January 21, 1977, and again on May 26, 1977, the importer made requests for reliquidation of the entry pursuant to section 520(c)(1), Tariff Act of 1930, as amended. In both instances, the necessary documentary evidence was not submitted.

The necessary documentary evidence was not submitted, until it was submitted on October 7, 1977, with the importer's protest against the district director's failure to reliquidate his entry pursuant to section 520(c)(1). The district director notes that if the documentary

evidence had been submitted with any one of the three requests for reliquidation pursuant to section 520(c)(1) the request would have been granted. However, the district director denies the protest because the documentary evidence to substantiate the importer's section 520(c)(1) claim was not received within the time limits prescribed by section 520(c)(1).

Law and analysis.—Section 520(c)(1), Tariff Act of 1930, as amended, (19 U.S.C. 1520(c)(1)), in pertinent part, provides that Customs may reliquidate an entry to correct a clerical error, mistake of fact, or other inadvertence not amounting to an error in the constructions of a law, if such error, mistake, or inadvertence is brought to the attention of Customs within 1 year after the liquidation of the entry.

The Court of Customs and Patent Appeals in the *United States* v. *C. J. Tower & Sons of Buffalo, Inc.*, C.A.D. 1129 (1974), among other things, ruled that if an error is timely brought to Customs attention within the appropriate time period, the entry is entitled to be reliquidated pursuant to section 520(c)(1), even though the importer did not submit the documentary evidence to substantiate its claim until after the time limits of section 520(c)(1) have run. Therefore, the entry should be reliquidated pursuant to section 520(c)(1), Tariff Act of 1930, as amended.

Holding.—Since the claim for reliquidation pursuant to section 520(c)(1), Tariff Act of 1930, as amended, was timely made, the importer is entitled to the reliquidation of his entry pursuant to that section, even though the documentary evidence substantiating such claim was not made within the time limits of section 520(c)(1). The protest is therefore allowed in full.

(C.S.D. 80–20)

Country-of-Origin Marking: Dungarees Labeled With Trade Name Containing the Name of a Locality Other Than the Country of Origin

Date: June 26, 1979
File: MAR–2–05–R:E:E
710682 MC

This ruling concerns the country-of-origin marking of dungarees bearing the trademark "Rome 1001."

Issue.—Whether the special location and lettering size exception for trademarks and trade names using the name of a location in the United States, as provided by Customs Regulations section 134.47, extends to trademarks containing the name of a foreign city.

Facts.—Dungarees manufactured in Hong Kong are intended to be imported into the United States. Each pair of jeans will have a sewn-on textile label firmly and permanently affixed to the interior waistband clearly and legibly indicating the material used, the size and the model number of the garment, and the words "Made in Hong Kong." The exterior waistband and/or rear pocket will have a leather or metal label attached or lettering embroidered indicating the importer's trademark "Rome 1001." The exterior of the garment will also have a cardboard hang tag affixed to the garment by means of a plastic fastener, which would again display the trademark logo "Rome 1001" and indicate the country of origin as "Made in British Colony of Hong Kong by (name of manufacturer)."

Law and analysis.—Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), requires that all articles imported into the United States be legibly, conspicuously, and permanently marked with the English name of the country of origin. Section 134.46 of the Customs Regulations further requires that where "the name of any city or locality in the United States, or the name of any foreign country or locality other than the country or locality in which the article was manufactured or produced" appears, the country-of-origin designation be "in close proximity to such words, letters, or name, and in at least a comparable size."

Section 134.47 provides a special exception where the city or locality name is part of a trademark or trade name. No "comparable size" requirement exists in such circumstances and the location of the country-of-origin marking can either be "in close proximity or in some other conspicuous location." However, unlike the "foreign country or locality" language in section 134.46, section 134.47 only mentions "the name of a location in the United States."

The rationale for granting a special exemption for trademarks and trade names containing the name of a domestic locality applies at least as strongly to trademarks bearing the name of a foreign locality. Accordingly, it is our opinion that the intent of section 134.47 was to include foreign trademark designations as well as domestic locales.

Holding.—Country-of-origin markings need not be in comparable size nor in close proximity (if in some other conspicuous location) to a trademark containing the name of a foreign locale. The markings appearing on the "Rome 1001" dungarees meet the requirements of section 134.47.

(C.S.D. 80–21)

Marking: Country-of-Origin Marking of Automotive Lamps Assembled Abroad From Components Made in the United States and Another Country

Date: June 27, 1979
File: MAR–1–01–R:E:E
710366 HS

This ruling concerns country-of-origin marking for 12-volt automotive lamps consisting of unbased lamps manufactured in Taiwan or Canada and American-made metal bases that are assembled in Mexico and being imported under the provisions of item 807.00, TSUS.

Issues.—1. What is the country of origin of the finished lamps?

2. Whether individual marking is required on lamps which are in packages that indicate the country of origin.

Facts.—Unbased lamps with filaments which have been evacuated of all atmosphere and sealed will be manufactured in Taiwan or in Canada and shipped directly to Mexico where they will be assembled to a metal base of U.S. origin to make a finished automatic 12-volt lamp that will be imported to the United States under the provisions of item 807.00, Tariff Schedules of the United States, American products exported and returned.

The completed lamps will be packaged in immediate containers of a blister pack with two lamps and an immediate container which will contain 10 of the same lamps for sale at retail in the United States.

Law and analysis.—1. Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides in general that all articles of foreign origin imported into the United States must be legibly and conspicuously marked to indicate the English name and the country of origin to an ultimate purchaser in the United States.

Section 134.1, Customs Regulations, defines "country of origin" as the country of manufacture, production, or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such country the country of origin.

In this case, unbased lamps that are made in Taiwan or Canada are assembled with American-made metal bases in Mexico. The unbased lamp becomes an integral part of the finished based lamps by the combining process. The assembly process is an intricate one and the unbased lamp is substantially transformed into a new and different product. The unbased lamp would have no functional value without being combined with the metal base.

Because the base of the lamp is manufactured in the United States, the lamp will be imported to the United States under the provisions of item 807.00, Tariff Schedules of the United States, which permits a reduced duty treatment for the value of components manufactured in the United States and assembled abroad. Section 10.22, Customs Regulations, provides that assembled articles entitled to the item 807.00, TSUS, reduced duty are considered products of the country of assembly for the purpose of country-of-origin requirements.

As Mexico is the country of assembly and the assembly process involves substantial transformation of the Taiwan/Canadian-made components, Mexico is the country of origin of the finished automotive lamps. Therefore, it would be acceptable for each brass base to have "Mexico" etched on it legibly, permanently, and indelibly in a conspicuous location.

2. The finished lamps are to be packaged in 10-packs and blister packs containing two lamps. The inquirer asks whether marking the immediate containers with the country of origin would be sufficient. The inquirer states that an ultimate consumer will be the purchaser of a blister pack containing two lamps, but the purchaser of a 10-pack may, or may not, be the ultimate consumer "because it is considered possible that individual lamps from the container may be further distributed by mechanics or service stations to other ultimate consumers."

Section 134.1, Customs Regulations, defines "ultimate purchaser" as generally the last person in the United States who will receive the article in the form in which it was imported. The purpose of the marking requirements is to enable the ultimate purchaser to decide whether to buy goods with knowledge of the goods' country of origin.

Section 134.32(d), Customs Regulations, provides an exception to individual marking requirements for articles for which the marking of the containers will reasonably indicate the origin of the article. The exception cannot apply, however, if containers will not remain intact, but be broken up for distribution to ultimate purchasers. As this is anticipated by the inquirer for the 10-packs, individual marking is required on all automotive lamps that are sold in 10-packs. However, as the ultimate purchaser will be the purchaser of a blister pack containing two lamps, the marking of the blister pack container with the country of origin will be sufficient for the two-pack.

Holding.—The country of origin of the 12-volt automotive lamps is Mexico. All the lamps contained in a 10–pack must be individually marked while it is only necessary to mark the immediate containers of the blister packs containing two lamps.

(C.S.D. 80-22)

Classification: Ski Hats

Date: June 28, 1979
File: CLA-2:R:CV:MA
062070 c

This ruling concerns the tariff classification of a ski hat.

Facts.—The sample is a ski hat made of 100 percent acrylic yarn, of knitted construction, which has an elastic band inserted into the edge of the hat.

The sample hat may be worn in two ways. It may be worn with the hat folded at the bottom to form a cuff, or it may be worn with the hat not folded in the manner of a ski hat.

The inquirer maintains that it is generally the practice that knitted hats, in order to fit snugly around a person's head, have an elastic band inserted either at the edge of the hat, or in the case of a hat which is turned up to form a cuff, near the part where the crease of the cuff is located. For this reason he suggests that the hat is properly classifiable under the provision for headwear, of manmade fibers: Wholly or in part of braid, in item 703.05, Tariff Schedules of the United States (TSUS), and dutiable at the rate of 18 percent ad valorem.

Issue.—Whether the hat is classifiable as claimed by the inquirer or is classifiable under the provision for headwear, of manmade fibers: Not in part of braid: Knit, in item 703.10, TSUS, and dutiable at the rate of 25 cents per pound plus 20 percent ad valorem.

Law and analysis.—It should be noted that in the instant case the braid is present in the form of a concealed tubular braid with an elastic core. Inasmuch as it is concealed it cannot be considered ornamentation.

General headnote 9(f) (iv), TSUS, provides that: "For the purposes of the schedules, unless the context otherwise requires—(f) the term 'of,' 'wholly of,' 'almost wholly of,' 'in part of' and 'containing,' when used between the description of an article and a material (e.g., 'furniture of wood,' 'woven fabrics, wholly of cotton'), have the following meanings (iv) 'in part of' or 'containing,' mean that the article contains a significant quantity of the named material." It is also noted that general headnote 9, TSUS, also provides that the de minimus rule apply.

Our interpretation of the word "significant," as used in the above-cited headnote, implies a degree of usefulness, being meaningful or necessary, or denoting employment for a reason. Thus, an item would

contain a significant quantity of braid if that portion or quantity serves a useful purpose and/or increases the saleability of the article.

An examination of the sample hat shows that it is made of jersey knit, 100 percent acrylic, spun staple fiber yarn. Unlike textured yarn, spun staple fiber yarn does not exhibit any significant stretch when subjected to tension. By way of contrast, a textured yarn exhibits varying degrees of stretch depending on the texturing process employed.

The primary difference in the uses of spun staple fiber yarn and textured filament yarn is their degree of stretchability when used in a knit fabric. Since a textured yarn can be stretched longitudinally as well as twisted or bent, the stretchability is enhanced over that exhibited by a spun staple yarn used in a knit fabric.

Spun staple yarn is generally used in applications which do not require a high degree of stretch. Hats, sweaters, gloves, and scarves are the most common applications. The so-called stretch (textured) yarns are primarily used in active-type wear, body supporting garments such as swimwear, hosiery, certain athletic uniforms, etc., which require a high degree of stretchability. In such applications the fabric must have "give" to accomodate extremes of movement in the knees, elbows, and back, for example. Whereas, for the hat in issue, the stretchability of the fabric is necessary simply for a snug fit.

The inquirer claims that the elastic makes up for a loss in stretchability with repeated usage. The primary cause for the loss of stretchability in a knitted fabric is slippage of the yarn through the knit structure. The knit structure of the hat before us is of relatively closed configuration. The thickness of the yarn is comparable to the size of the knit stitch by a ratio of approximately 1:3. Since each knit stitch contains two thickness of yarn, the yarn fills almost all the space in the knit structure.

It should be noted that slippage of the yarn through the knit structure, when tension is applied along the courses, is directly related to the extent of the compression of the courses. The thicker the yarn is in comparision to the knit stitch size, the less the courses can be compressed, and, thus, the less slippage occurs.

In a closed-knit structure such as that which appears in the sample hat, the relative thickness of the yarn compared to the knit stitch size effectively prevents excessive compression of the courses and thus precludes slippage of the yarn, resulting in a fabric with good stretchability. Consequently, it is our position that the presence if the braid in the hat is not significant because the knitted construction of the hat gives it sufficient stretchability thus rendering the elastic braid an unnecessary addition.

Holding.—The sample hat is dutiable at the rate of 25 cents per pound plus 20 percent ad valorem under item 703.10, TSUS.

We are forwarding a copy of your inquiry to our Duty Assessment Division which will furnish you with information concerning the stastical suffixes and textile category designations applicable to the merchandise described above.

(C.S.D. 80–23)

Country-of-Origin Marking: Watchcases Assembled Abroad From American Casebacks and Foreign-Made Bezels

Date: June 29, 1979
File: MAR–2–05–R:E:E
710710 HS

This ruling concerns country-of-origin marking on watchcases assembled in a foreign country, the casebacks of which are of U.S. origin, when the watchcases are assembled into complete watches and then imported.

Issue.—How should watchcases assembled in a foreign country consisting of American-made casebacks and foreign-made bezels be marked when they are assembled into complete watches before importation?

Facts.—Watch casebacks of U.S. origin are shipped to Europe where they are assembled with European-made bezels and waterproof tested. They are then shipped to the Far East for assembly into complete watches. The watches are then imported into the United States.

Law and analysis.—Schedule 7, part 2, subpart E, headnote 4, Tariff Schedules of the United States (1978) sets forth special marking requirements for watches. According to these requirements, watchcases are to be marked in the inside or outside of the back cover to show the name of the country of manufacture and the name of the manufacturer or purchaser. The country of manufacture in this requirement refers to where the case was manufactured, rather than where the watch was made.

The special marking requirements set forth by the Tariff Schedules do not apply to American-made components of imported watches. Therefore, if the watchcase is considered to be American made, it would not be necessary for the watchcase to be marked.

In this instance, the watchcase consists of an American-made caseback combined with a European-made bezel and the watchcase is assembled in Europe. The question becomes whether the caseback is

substantially transformed into a new and different product by the addition of the bezel.

Without the bezel, the caseback cannot serve as a watchcase. The caseback loses its identity by being combined with the bezel and becomes an integral part of a watchcase. Further, the caseback has little or no value as an item of commerce apart from being part of a watchcase. Therefore, the American-made caseback is substantially transformed into a new and different product, a European-made watchcase, and it is necessary for the watchcase to be marked according to the special requirements set forth by the Tariff Schedules.

Holding.—Watchcases, consisting of American-made casebacks and foreign-made bezels, that are assembled in a foreign country, must be marked to indicate the country of assembly as the country of manufacture, pursuant to the special marking requirements of the Tariff Schedules of the United States.

(C.S.D. 80–24)

Temporary Importations Under Bond: Whether Drugs Imported for Testing Are Considered To Be Destroyed Because Lack of FDA Approval Makes Them Unmarketable

Date: June 30, 1979
File: CON–9–09 R:CD:D B 210532

Issue.—Are drugs entered under item 864.30, TSUS, free of duty under temporary importation bond for testing considered destroyed within the meaning of headnote 3, schedule 8, part 5, subpart C, TSUS, when such drugs are used for stability testing and cannot be marketed since they have no commercial value?

Facts.—A U.S. corporation imports from its parent foreign corporation certain drugs for testing. These drugs cannot be marketed because they have not been approved by the Food and Drug Administration. One of the tests required by the FDA is one for stability or "shelf life." The importer/corporation freely admits that the stability testing will extend longer than the bond period, or any extensions thereof, but claims that because the drugs cannot be marketed lacking FDA approval, they have effectively been destroyed within the meaning of the above-cited headnote to the tariff schedules.

Law and analysis.—Item 864.30, TSUS, allows the free importation under temporary importation bond for articles intended solely for testing, experimental, or review purposes. To satisfy the bond and

avoid liquidated damages, articles entered for testing must be exported or destroyed within 1 year. This period may be extended for one or more further periods which when added to the initial 1 year, shall not exceed a total of 3 years.

Headnote 3, schedule 8, part 5, subpart C. TSUS, provides:

> Upon satisfactory proof that any article admitted under item 864.30 has been destroyed because of its use for any purpose provided for therein, the obligation under the bond to export such article shall be treated as satisfied.

It is clear that the testing for stability does not destroy these drugs, unless it can be shown that their life on the shelf has depreciated them to the point that they have no value and cannot be used for any useful purpose. However, the importer does not allege this, but claims these drugs are destroyed because they must remain on the shelf and cannot be marketed without FDA approval. There is a vast difference between the two foregoing situations.

These drugs do have commercial value; not in the sense of being saleable to the public, but in the sense that the data obtained from the stability testing represent a substantial commercial asset to the importer.

The Customs Court and its predecessor, the Board of Appraisers, have consistently held that the privilege of free entry under temporary importation bond must be "strictly construed." *American Gas Accumulator Co.* v. *United States*, 56 Treas. Dec. 368, at 370, T.D. 43642 (October 29, 1929). The board, noting that of three acetylene gas drums which had been substantially damaged in testing, one had been sold as scrap, the other two salvaged. The Board of Appraisers assumed by "salvage" that "the merchandise was either put to *some valuable use* or some substantial amount was received for it". 56 Treas. Dec., at 369 [italic added]. It cannot be easily denied that drugs undergoing stability testing are being put to valuable use. Further, the Board of Appraisers and the Customs Court consistently used language similar to: "(An article) is destroyed when its value, usefulness, and that which makes it what it is are completely lost." *United States* v. *Pastene & Co.*, 22 Treas. Dec. 725, at 727, T.D. 32458 (April 17, 1912). Any article undergoing testing has not lost its value or usefulness while it remains under testing, unless it is destroyed by the testing. The Customs Court has continued to follow this reasoning: To be considered destroyed, "total destruction rendering an article utterly worthless is necessary." *H. A. Johnson Co.* v. *United States.*, 21 Cust. Ct. 56, at 61, C.D. 1127 (August 25, 1948).

Finally, the Customs Service, not only under the present law but under its predecessor, section 308(4), Tariff Act of 1930, as amended, has

repeatedly ruled that substances or drugs imported for testing which are not destroyed or consumed by such testing, must be destroyed. See the following: Bureau letter to Collector of Customs, Tampa, May 17, 1956 (516.23) (fructose used as test with diabetics); Bureau letter to law firm of O'Connor & Farber, September 12, 1955 (412.6) (common cold medicine for distribution as part of a test); Bureau letter to Collector, Indianapolis, August 8, 1955 (516.23) (tablets used for testing on persons suffering from hypertension).

Holding.—While undergoing stability testing, these drugs are not considered destroyed within the meaning of headnote 3, schedule 8, part C, TSUS, unless it can be shown that because of the length of such testing, the drugs have completely deteriorated. The drugs which have not completely deteriorated must be exported timely or the importer will incur liquidated damages.

This matter should be referred to the agent in charge. If it can be shown that the importer knew at the time of importation the drugs could not be timely exported within the bond period or any extensions thereof, there is a strong possibility that section 1592, title 19, United States Code, has been violated.

(C.S.D. 80–25)

Collections and Refunds: Special Tonnage Taxes and Light Money

Date: July 3, 1979
File: VES–11–11–R:CD:C
103848 KP

To: Regional Commissioner of Customs, Baltimore, Md.

From: Acting Director, Carriers, Drawback and Bonds Division.

Subject: Request for Internal Advice—Collection of Special Tonnage Tax and Light Money.

This refers to a memorandum of January 31, 1979 (VES–11–RO:IC T), requesting internal advice relating to the collection of special tonnage tax and light money under the provisions of sections 4.20(c) and 4.22, Customs Regulations.

Your specific questions with our responses are set forth in the order asked.

1. Are vessels under the following registry subject to special tonnage tax and light money: Bahamas, Bangladesh, Libya?

With respect to Bangladesh and the Bahamas, we have received assurances from the State Department that will, in time, no doubt place the vessels of these nations on the exempt list. However, certain mechanics must first take place that are still in process. Therefore,

vessels of Bangladesh and the Bahamas are subject to the payment of special tonnage taxes and light money.

Registered vessels of Libya are exempt from the payment of special tonnage tax and light money retroactive to September 1, 1969, under T.D. 78–451, dated November 7, 1978. The addition of Libya to the list of countries in section 4.22, Customs Regulations, has not yet been published.

2. Is a country exempt if it is still under the rule of its mother country, i.e., Netherland Antilles?

Under the Treaty of Friendship, Commerce and Navigation, entered into force December 5, 1957, between the United States and the Kingdom of the Netherlands, exemption from the payment of special tonnage tax and light money was granted to vessels under the flag of the Netherlands. However, article XXIV provided that the treaty shall not apply with respect to Surinam or the Netherland Antilles, until 1 month after the receipt by the United States of notification of such application by the Kingdom of the Netherlands. While we have not received the assurances required by the treaty and Surinam and the Netherland Antilles have therefore not qualified for the exemption under the terms of the treaty, Surinam subsequently applied for exemption and in T.D. 78–157, dated May 23, 1978, vessels under the flag of Surinam were granted exemption from the payment of special tonnage tax and light money. Vessels of the Netherland Antilles are not so exempt.

3. Are there limitations on collecting special tonnage taxes and light money from previous arrivals?

We know of no limitations on collecting special tonnage taxes and light money from previous arrivals. We attach herewith a copy of a legal memorandum relating to this issue.

(C.S.D. 80–26)

Carrier Control: Entry of Vessels Arriving From the High Seas

Date: July 6, 1979
File: VES–5–R:CD:C/VES–9
104017 MKT

This ruling concerns the entry of vessels arriving in the United States from the high seas whose crewmembers have traveled to a foreign country for shore leave.

Issue.—Whether a vessel arriving in the United States from the high seas must make entry pursuant to title 19, United States Code, section

313-579 O - 79 - 4

1434 or 1435, merely because its crewmembers have been transported by launch from the vessel to a foreign port or place for shore leave.

Facts.—Crewmembers of vessels which lighter crude from storage vessels located on the high seas travel by launch from the vessels at a point on the high seas to Panama for shore leave. The lightering vessels then proceed to the United States.

Law and analysis.—Title 19, United States Code, section 1434, requires U.S. vessels arriving from a foreign port or place to make entry. Section 1435 of title 19 requires any foreign vessel to make entry whenever it arrives in any Customs collection district, unless otherwise exempted by stature.

As we advised you in our ruling of March 12, 1976 (copy enclosed), when a U.S. vessel arrives in the United States from the high seas, no entry is required. A foreign vessel arriving under the same circumstances is required to make entry. The U.S. vessel is not required to make entry because it has not made contact with a foreign port or place within the meaning of section 1434. A "foreign port" is defined as "a port or place exclusively within the sovereignty of a foreign nation." *The Winnie*, 65 F. 2d 706, 707 (3d Cir. 1933). In this case, although crewmembers have visited a foreign port or place, the vessel has remained on the high seas, outside the territorial waters of any foreign nation. Therefore, we do not consider the vessel to have arrived from a foreign port or place. Nevertheless, the crewmembers will be required to declare any articles purchased abroad upon the arrival of the vessel in the United States, in compliance with section 148.62, Customs Regulations. Regardless of whether a foreign vessel has touched a foreign port or place, unless otherwise exempt, it is required to make entry.

Holding.—A U.S. vessel arriving in the United States from the high seas is not required to make entry in accordance with section 1434 of title 19 merely because its crewmembers have traveled by launch from that vessel to a foreign country for shore leave. Unless exempted by statute, a foreign vessel must make entry in accordance with section 1435 whenever it arrives in any Customs collection district.

(C.S.D. 80–27)

Generalized System of Preferences: Substantial Transformation of Rattan; Pulling, Straightening, Cutting To Size, and Soaking

Date: July 9, 1979
File: R:CV:S JLV
061412

This is our response to your request for internal advice (No. 103/79), dated May 11, 1979, concerning metal-frame furniture containing rattan materials. Specifically, you raise the question as to whether the rattan, imported into Haiti, is a substantially transformed constituent material of the furniture for purposes of the Generalized System of Preference (GSP). The classification of the article imported into the United States is not an issue raised in your request.

Issue.—Does the pulling, straightening, cutting to size, and soaking substantially transform imported rattan into a material produced in Haiti within the meaning of section 503(b)(2)(A)(i) of the Trade Act of 1974 and section 10.177(a)(2) of the Customs Regulations?

Facts.—Rattan reeds are imported into Haiti and used in the manufacture of metal-frame furniture classifiable under item 727.55, Tariff Schedules of the United States (TSUS). For purposes of the GSP, Haiti is a beneficiary developing country (BDC) and articles imported under item 727.55, TSUS, are designated as eligible for duty-free treatment.

The rattan reeds are imported in bundles weighing 110 pounds. The bundled reeds vary in widths of approximately 3.25 millimeters and 4.25 millimeters and in lengths of 10 to 12 feet. After the bundles are opened, the rattan reeds are pulled, straightened, and cut to size (length) for weaving. The reeds are then soaked in water to soften them and to make them manageable for weaving. While still soft and pliable, the processed rattan needs are woven onto metal frames. The woven rattan is then finished by drying, burning, and sanding to remove fray and fuzz resulting from the weaving process. The article is then ready for exportation.

Law and analysis.—Under the provisions of the GSP, an eligible article may be imported free of duty if it otherwise qualifies. One such qualifying requirement is a value-added requirement. That is, the sum of (1) the cost or value of materials produced in the BDC and (2) the direct costs of processing operations performed in that BDC must not be less than 35 percent of the appraised value of the eligible article at the time of its entry into the customs territory of the United States. The question presented in this case is whether the imported

rattan may be considered a "material produced" in Haiti for purposes of the value-added requirement.

Under section 10.177(a)(2) of the Customs Regulations (19 CFR 10.177(a)(2)), a material imported into a BDC may be considered a material produced in that BDC if it is substantially transformed in the BDC into a new and different article of commerce prior to being used in the production of the eligible article. It is claimed that the imported rattan is substantially transformed into a constituent material by the pulling, straightening, cutting to length, and soaking operations. Headquarters letter dated April 26, 1976 (file 044602), concerning leather cut into shapes and forms for gloves, is cited as support.

Mere cutting to length is not a processing operation which results in a substantial transformation. In this case, the rattan reeds are merely cut to manageable lengths for weaving. The cited letter (file 044602) concerned a cutting operation which resulted in leather glove components of specific sizes, shapes, and patterns. Such a situation is clearly distinguishable from the instant case and is not applicable here.

The straightening and soaking operations merely place the imported rattan into a physical condition suitable for weaving. The processing does not result in an intermediate product prior to the weaving of the rattan into the eligible article. It is our opinion that such processing does not result in a new and different article of commerce within the meaning of section 10.177(a)(2) of the Customs Regulations.

Holding.—The pulling, straightening, cutting to length, and soaking of imported rattan does not result in a substantial transformation of the rattan under the law and regulations of the GSP.

(C.S.D. 80–28)

Entry: Whether Consumption and Warehouse Entry Summaries May Be Filed for Different Portions of the Same Shipment of Merchandise

Date: July 10, 1979
File: ENT–1–01–R:E:E
710521 M

This ruling concerns the question as to whether a consumption entry summary may be filed for part of a shipment and a warehouse entry summary for the remainder of the shipment when the entire shipment was transported under one immediate transportation entry.

Facts.—A shipment of merchandise is transported inbond under one immediate transportation entry in installments from Seattle to Chicago. At Chicago, the importer desiring to obtain release for consumption on a portion of the shipment and to place in a bonded Customs warehouse the remainder of the shipment files two entries, as the term is understood under the new entry procedure established by Public Law 95–410. (Under this new entry procedure, the releasing document is referred to as the entry, and the followup document setting forth information needed for duty determination and statistical purposes is called the entry summary.) One entry would specify that a consumption entry summary will be filed for that portion of the shipment, whereas the other entry would specify that a warehouse entry summary will be filed for the remainder. Subsequently, a consumption entry summary is filed for the part of shipment indicated on the first entry, and a warehouse entry summary is filed for the remainder of the shipment indicated on the latter entry.

The district director believes that this procedure is precluded by 19 U.S.C. 1484(f) and sections 141.55 and 141.52(c) of the Customs Regulations.

Issue.—May a consumption entry summary be accepted for part of a shipment and a warehouse entry summary accepted for the remainder when the shipment was originally transported to the port of destination inbond under one immediate transportation entry?

19 U.S.C. 1484(f) and section 141.55 of the Customs Regulations, in pertinent part, provides that the district director is authorized to accept an entry for consumption or for warehousing for the entire quantity of merchandise covered by an entry for immediate transportation after the arrival of any part of such quantity at the port of destination.

Section 141.52(c) provides, in pertinent parts, that separate entries may be made for different portions of a shipment if the consignee desires to enter different portions under different forms of entry, for transportation to different ports of entry, or for warehousing in separate warehouses.

Since both 19 U.S.C. 1484(f) and section 141.55 of the Customs Regulations, in effect, provide that the district director is "authorized to accept" one entry summary for a shipment arriving under an immediate transportation entry, we believe that this language is permissive and neither mandatory nor restrictive. Such language would not authorize the district director to require only one entry summary in such circumstances. Whether or not one entry summary should be filed would be left to the discretion ot the importer. If the importer decided to file one entry summary for such shipment, the

district director would have the authority to accept such entry summary.

In support of his contention that such language is mandatory rather than permissive, the district director notes that Customs headquarters issued Legal Determination 3550–16 which set forth circumstances when one entry summary may be accepted by the district director for a shipment arriving under one immediate transportation entry or multiple immediate transportation entries. This legal determination arose out of the desire by importers and brokers to file one entry summary for such shipments and the necessity by Customs to issue guidelines in regard to the circumstances as to when one entry summary may be accepted.

The district director also refers to Manual Supplement No. 3551–01 and suggests that this supplement set forth the general rule of "one shipment, one consignee, one entry." This statement merely repeats the general rule as set forth in section 141.51 of the Customs Regulations. The exceptions to the general rule are set forth in section 141.52 of the Customs Regulations and are so noted in this manual supplement.

The district director believes that the phrase "different forms of entry" as used in section 141.52(c) is qualified by the last two clauses in that section and hence only permits the filing of transportation entries and entries for warehouse (now referred to as warehouse entry summaries) for one shipment. This phrase, under the district director's interpretation, would not apply to consumption entry summaries. Therefore, under his interpretation, warehouse entry summaries and consumption entry summaries could not be filed for the same shipment.

We believe that, on the contrary, section 141.52(c) sets forth three different circumstances whereby the filing of separate entry summaries are permissible and that the last two clauses do not modify the first clause. We believe that the first clause which states that "The consignee desires to enter different portions under different forms of entry, * * *" is self-sufficient and includes both consumption entry summaries and warehouse entry summaries. The second clause addresses a different situation and is concerned when merchandise is being transported to different ports of entry, and the third clause is concerned about another situation in which merchandise is being warehoused in separate warehouses. Under situation two or three, you are not speaking in terms of different forms of entry, but are concerned about filing more than one type of the same entry for the circumstance involved.

The district director notes that, instead of filing a consumption entry summary for a portion of the merchandise and a warehouse entry summary for the remaining merchandise in that shipment, the same result could be obtained if the importer filed a warehouse entry summary for the entire shipment and immediately filed a warehouse withdrawal for consumption for that portion of the merchandise he desires to enter for consumption. The district director believes that requiring the importer to file a warehouse entry summary for the entire portion of the merchandise would result in a quicker payment of the estimated duties because such duties for that portion of merchandise he desires to immediately enter for consumption must be paid when he files the warehouse withdrawal.

We note that the district director in arriving at this determination is making a couple of assumptions that may or may not apply depending upon the circumstances and that depending on the circumstances his requirement could result in a later payment, rather than an earlier payment, of duty. First, after the merchandise is released under the entry document the importer has 10 working days to file the appropriate entry summary, irrespective of whether it is a warehouse entry summary or a consumption entry summary. Thus, although importers may generally file a warehouse entry summary at time of release or shortly thereafter, they could wait until the 10th day after release before filing such entry summary. Second, the district director is assuming that the importer desires to obtain that portion of the merchandise designated for consumption immediately. There is no requirement that merchandise placed in a Customs-bonded warehouse must be withdrawn immediately. The importer has up to 5 years from the date of the importation of such merchandise to withdraw it. However, when a consumption entry summary is filed with Customs, the importer is required to deposit with that entry summary the estimated duties.

Holding.—A consumption entry summary may be filed at the port of final destination for part of a shipment and a warehouse entry summary for the remainder of the shipment, even though the entire shipment was transported inbond under one immediate transportation entry from the port of arrival to the port of final destination.

(C.S.D. 80–29)

Marking: Country-of-Origin Marking on Disposable Container Packaging

Date: July 10, 1979
File: MAR 2–05 R:E:E
709707 JB

This ruling concerns the legend on disposable container packaging with the name and address of the distributor and the legend "Country of Origin on Contents" when the contents for sale at retail, such as garments, are not excepted from country-of-origin marking.

Issue.—May the marking on packaging indicating the name, address, and ZIP code of the distributor followed by the statement "Country of Origin on Contents" be used to satisfy country-of-origin marking requirements when the labels or tags attached to the contents are required to indicate the name of the country of foreign origin?

Facts.—The U.S. distributor imports garments and other products individually packaged for sale at retail to ultimate purchasers in disposable containers, generally in polybags or polywrap. If an immediate container reasonably indicates the country of origin of the contents, an article may be excepted from origin marking (19 U.S.C. 1304 (a) (3) (D)). In the case of imported wearing apparel, however, labels or tags are attached to the garments to indicate the country of origin and to conform to additional requirements of the Textile Fiber Identification Act, Wool Products Labeling Act, and the Fair Packaging and Labeling Act.

The distributor's practice is to purchase the packaging in bulk and to export the containers to a variety of foreign suppliers. The company states that when the specific name of the country of origin must follow its name and address (19 CFR 134.46 and 19 CFR 134.22(c)), additional costs and complexities arise due to shorter production runs for the printed packaging, the maintenance of an increased number of unit containers in inventory, and difficulties in the distribution of the packaging for use by its manufacturers abroad.

The distributor places its name, address, and ZIP code on consumer packaging in order to comply with the laws of States which have adopted the Model State Packaging Law which requires products subject thereto to bear the name, address, or locality, and ZIP code of the manufacturer, distributor, or packer. The Federal Fair Packaging and Labeling Act (15 U.S.C. 1451 et seq.; 16 CFR 500.5) contains similar requirements for consmer commodities.

Law and analysis.—19 CFR 134.46 provides that where the name of any locality in the United States (or the words or letters "United

States," "American," "U.S.A.," or any variation thereof) appears on an imported article or its container, the name of the country of origin of the imported article must appear conspicuously and in close proximity to such locality in letters of comparable size preceded by "Made in," "Product of," or other words of similar meaning; 19 CFR 134.22 (c) reflects the provisions of 19 CFR 134.46, as applied to containers or holders bearing a U.S. address. The purpose of this requirement is is to obviate a misleading impression or any false representation to the ultimate purchaser that the article is of U.S. origin.

The proposed country-of-origin legend is not misleading or in contravention of 19 CFR 134.46 if the marked contents are packaged in disposable containers normally opened by a purchaser at retail prior to sale, e.g., a polybag with slit, envelope-type opening, or a sealed, disposable container where the origin marking is visible to the ultimate purchaser without unpacking. In the case of foreign goods which are excepted from origin marking if the country of foreign origin appears on the immediate containers (19 U.S.C. 1304 (a)(3)(D)), however, the country of origin must be affixed in close proximity to the legend.

Holding.—A marking legend "Imported and Distributed By *Name, address, and ZIP code*, Country of Origin on Contents," is an acceptable method of marking on disposable containers when the contents are labeled or tagged to indicate the specific name of the country of foreign origin, provided the labels or tags are clearly visible without unpacking or the contents are packed in containers that are normally opened by the ultimate purchaser at retail prior to sale. However, the name of the specific country of origin must be affixed in close proximity to the legend on the container if the contents are excepted from country-of-origin marking.

(C.S.D. 80-30)

Prohibited and Restricted Importations: Copyright Infringement; Book With Art Reproductions and Textual Commentary

Date: July 10, 1979
File: CPR-5-R:E:E
709582 SO

This ruling concerns the manufacturing requirements of the Copyright Act of 1976 and the possible applicability of the restrictions thereunder to the importation of the book, "The Armand Hammer Collection: Four Centuries of Masterpieces," manufactured in Japan.

Issue.—Would the importation into the United States of a book entitled "The Armand Hammer Collection: Four Centuries of Masterpieces," be restricted or prohibited by the "manufacturing clause" of the 1976 U.S. Copyright Law (17 U.S.C. 601)?

Facts.—A New York publisher intends to manufacture a book in the English language in Japan. The work will consist of 290 pages with 115 full-page, full-color illustrations of paintings, drawings, water colors, and pasters that together form most of the art collection of Dr. Armand Hammer. The work will have a suggested retail price of $75. The textual portions of this volume were written by a distinguished American art expert. The textual portions are comprised chiefly of introductory material on the life of Dr. Hammer and the formation of his collection and individual commentaries on each of the illustrations of the works of art in the collection. A complete mockup of the work was submitted along with a letter from the New York publisher expressing the opinion that the introductory material and the individual commentaries on each work of art reproduced are secondary and ancillary to the reproductions of the works of art themselves.

Law and analysis.—In general, section 601(a) of the 1976 Copyright Law prohibits the importation into or public distribution in the United States of "a work consisting preponderantly of nondramatic literary material that is in the English language and is protected under this title," unless the portions consisting of such material have been manufactured in the United States or Canada. The manufacturing requirements would not extend to dramatic, musical, pictorial, or graphic works; foreign-language works and bilingual or multilingual dictionaries; or public domain material.

The Senate report on the 1976 Copyright Law Revision (No. 94–473) states that:

> A work containing "nondramatic literary material that is in the English language and is protected under this title," and also containing dramatic, musical, pictorial, graphic, foreign-language, public domain, or other material that is not subject to the manufacturing requirement, or any combination of these, is not considered to consist "preponderantly" of the copyright-protected, nondramatic, English language, literary material unless such material exceeds the exempted material in importance. Thus, where the literary material in a work consists merely of a forward or preface, and captions, hearings, or brief descriptions or explanations of pictorial, graphic, or other nonliterary material, the manufacturing requirement does not apply to the work in whole or in part. In such case, the nonliterary material clearly exceeds the literary material in importance, and the entire work is free of the manufacturing requirement.

We are of the opinion that the book, "The Armand Hammer Collection: Four Centuries of Masterpieces," is the type of work discussed in the excerpt from the Senate report quoted above, where the pictorial material clearly exceeds the copyright-protected, nondramatic, literary material in importance.

Holding.—The book described above entitled, "The Armand Hammer Collection: Four Centuries of Masterpieces," published in Japan and bearing the notice of copyright, would not be prohibited entry into the United States by the "manufacturing clause" of the 1976 U.S. Copyright Law (17 U.S.C. 601).

Decisions of the United States Customs Court

Customs Decisions

(C.D. 4840)

STATE METALS, INC., PLAINTIFF, *v.* UNITED STATES, DEFENDANT

Court No. 76-6-01378

[Plaintiff's motion granted.]

(Dated February 5, 1980)

Shaw & Stedina for the plaintiff.
Alice Daniel, Assistant Attorney General, for the defendant.

ORDER

RE, C.J.: Upon reading and filing of plaintiff's motion, with the consent of the United States, defendant, to dismiss this action, which

action was the subject of a decision and judgment of this court, decided on March 28, 1979, C.D. 4793, which decision and judgment is now the subject of a pending motion for rehearing filed by defendant on April 25, 1979, and in consideration of the fact that plaintiff and defendant have reached agreement as to an acceptable resolution of the issue contested in this action, it is hereby

ORDERED, ADJUDGED AND DECREED that plaintiff's motion to dismiss is granted, and court No. 76–6–01378 is therefore dismissed; and it is further

ORDERED that the decision and judgment of this court in C.D. 4793, decided March 28, 1979, now being moot, is hereby vacated and set aside, *Cf. United States* v. *Munsingwear, Inc.*, 340 U.S. 36 (1950); and it is further

ORDERED that, inasmuch as the action is dismissed and the decision and judgment vacated and set aside, defendant's motion for rehearing in C.D. 4793 is moot.

(C.D. 4841)

COLONNA & CO., INC., PLAINTIFF, *v.* UNITED STATES, DEFENDANT

Marble and travertine blocks

Consolidated Court No. 70/50462

Imported marble and travertine blocks are not advanced beyond their rough state by additional sawing done at the quarry to straighten irregular shapes, eliminate cracks and bumps. The work is done to create a merchantable rough block, has no direct relation to the ultimate stone products, and is not a manufacturing step. The classification in provisions for manufactured stone is held erroneous. The contrary holding in *Domestic Marble & Stone Co.* v. *United States*, 64 Cust. Ct. 360, C.D. 4003 (1970) is criticized.

[Judgment for plaintiff.]

(Decided February 6, 1980)

Lamb & Lerch (*Murray Sklaroff* at the trial and on the brief) for the plaintiff.

Alice Daniel, Assistant Attorney General; *Joseph I. Liebman*, Attorney in Charge, Field Office for Customs Litigation (*Susan C. Cassell* at the trial and on the brief), for the defendant.

WATSON, Judge: This consolidated action challenges the classification of marble and travertine blocks imported from Italy.

The marble block was classified as sawed marble under item 514.57[1] of the Tariff Schedules of the United States (TSUS) and assessed with duty at the rate of 40 cents per cubic foot. The travertine blocks were classified as sawed travertine under item 515.24[2] of the TSUS and assessed with duty at the rate of 14.5 or 12.5 per centum ad valorem, depending on the date of entry.

Plaintiff claims that the marble block is properly classifiable as marble, in block, rough or squared, under item 514.51[3] of the TSUS, dutiable at the rate of 22 cents per cubic foot and further claims that the travertine blocks are properly classifiable as unsawn travertine under item 515.21[4] of the TSUS, dutiable at the rate of 7 or 6 cents per cubic foot, depending on the date of entry.

The record of *Domestic Marble & Stone Co.* v. *United States*, 64 Cust. Ct. 360, C.D. 4003 (1970) was incorporated herein.

The imported stone blocks are removed from the quarry by wire sawing, resulting first in a large stone mass of 100 to 200 tons and then in more manageable rectangular blocks of less than 20 tons. A typical block would be about 10 feet long, 3½ feet high, and 3½ feet wide, and would weigh about 10 tons. At the quarry some additional work is normally done to straighten out irregular shapes, remove bumps and recut blocks to eliminate cracks. In the *Domestic Marble & Stone Co.* case, this additional work was considered to be manufacturing and the court held travertine blocks to be manufactured within the meaning of item 515.24. The defendant argues for the *stare decisis* effect of that holding.

However, the court is presently of the opinion that *stare decisis* should not apply because the decision in the *Domestic Marble* case was erroneous. It is unreasonable to hold that massive blocks of stone, which must be utterly transformed after importation into relatively thin slabs, are subjected to manufacture by steps taken at the quarry which merely place the blocks in a rough, merchantable condition and eliminate the need to ship useless, cracked portions and protuberances. The additional shaping of the rough blocks has no direct relation to the dimensions of the finished product. In this important respect the analogies drawn in the *Domestic Marble* case to

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[1] Marble, breccia, or onyx, sawed or dressed, over 2 inches thick — 40¢ per cubic foot.

[2] Travertine, hewn, sawed, dressed, polished or otherwise manufactured, and suitable for use as monumental, paving, or building stone — 14.5% ad val. [1970]; 12.5% ad val. [1971]

[3] Marble, breccia, in block, rough or squared only — 22¢ per cubic foot.

[4] Travertine, not hewn, not sawed, not dressed, not polished, and not otherwise manufactured — 7¢ per cubic foot. [1970]; 6¢ per cubic foot. [1971]

the cutting of one end of used print rollers and the trimming of palmyra stalks to approximate ordered lengths were defective. In *David M. Studner* v. *United States*, 62 Cust. Ct. 63, C.D. 3679, 295 F. Supp. 289 (1969), the cutting of one end of used print rollers was directly related to the ultimate use of the objects as articles of interior decoration such as lamp bases, umbrella stands, floor vases, etc. In *Chas. H. Demarest, Inc.* v. *United States*, 44 CCPA 133, C.A.D. 650 (1957), the palmyra stalks were trimmed to approximate ordered lengths, an act which directly contributed to the ensuing production of brooms and brushes. No equivalent trimming to size took place here and there was no measurable relation between what was done at the quarry and the final products.

A far better analogy is offered by cane sticks which were stripped of bark, trimmed of valueless portions, dried or seasoned, denoded (removal of joints between the straight sections), sorted, and, in some instances, quartered—all this prior to importation for use in the manufacture of reeds for musical instruments. Nevertheless they were held to be "in the rough." *Rico Products Co. et al.* v. *United States*, 44 Cust. Ct. 100, C.D. 2159 (1960). *Cf. General Freight Services, Inc., et al.* v. *United States*, 74 Cust. Ct. 87, C.D. 4590 (1975) in which frozen "pearl" onions, from which the roots, tops, and outer skin layers were removed, were held not to be cut, sliced, or otherwise reduced in size. *See also The Hothouse Products Corp. et al.*, 21 CCPA 261, T.D. 46789) (1933) in which endive, from which the grower normally removed 20 percent of the outer leaves, was held to be a vegetable in its natural state. *See also E. Dillingham, Inc., et al.* v. *United States*, 61 Cust. Ct. 33, C.D. 3522 (1968) in which the removal of burrs or slivers of steel from axe head forgings was held not to have advanced them beyond forgings.

If there was any doubt in the incorporated record as to the significance of the additional work done at the quarry, the additional testimony herein made it clear that the imported blocks do not possess perfectly straight surfaces and the surface portions of the blocks are rarely, if ever, used. After importation they are normally sliced away as part of the process by which a rank of gang saws makes parallel cuts to produce slabs from the interior of the block. In retrospect, the rudimentary additional shaping which occurred at the quarry had no direct relation to the final product and was only an eminently reasonable preparation of a bulky natural material for shipment and sale.

It is clear that the sawing done merely to remove stone from the quarry and reduce it to commercial sizes suitable for transportation is not the manufacturing of travertine referred to in item 515.25. The sawing referred to in that provision must be an act of manufacture,

not an act of extraction from the earth or a related preparation for shipment and sale. Nor would it be reasonable to read item 514.57 covering sawed marble as including marble in which sawing has been used only for the same basic quarrying purposes and for the preparation of blocks for shipment, because another provision (item 514.51) already exists for blocks of marble in the rough.

Accordingly, it is the holding of the court that the classification of these marble and travertine blocks in the provisions governing those materials when "sawed" was incorrect. Plaintiff has successfully proved that the proper classification for the marble block is under item 514.51 as marble blocks in the rough and that the proper classification for the travertine blocks is as unmanufactured travertine under item 515.21.

Judgment will enter accordingly.

(C.D. 4842)

TERRA FIRMA SALES CO., PLAINTIFF *v.* UNITED STATES, DEFENDANT

On Plaintiff's Motion and Defendant's Cross-Motion for Summary Judgment

Court No. 75–10–02593

ARTIFICIAL FLOWERS

Flowers made by glueing together parts of natural plants were properly classified as artificial flowers. The use of natural plant materials to create a flower does not result in a natural flower. An artificial flower is a flower whose body was not created by nature.

[Plaintiff's motion denied; defendant's cross-motion granted.]

(Dated February 6, 1980)

Stanley R. Gustafson for the plaintiff.

Alice Daniel, Assistant Attorney General; *Joseph I. Liebman*, Attorney in Charge, Field Office for Customs Litigation (*Susan C. Cassell* on the briefs), for the defendant.

MEMORANDUM OPINION AND ORDER

WATSON, Judge: This action challenges the classification of imported articles having the likeness of flowers. They consist of parts of dried plants which have been glued together to form a flower and then attached to a wrapped wire stem. They were classified as artificial

flowers under item 748.21 [1] of the Tariff Schedules of the United States (TSUS) and assessed with duty at the rate of 42.5 per centum ad valorem. Plaintiff claims that they are either free of duty as dried or bleached natural plants under item 748.30 [2] of the TSUS or dutiable at the rate of 5 per centum ad valorem under item 748.25 [3] of the TSUS as cut natural flowers.

Plaintiff argues in effect that artificial flowers must be composed of artificial substances. However, in the opinion of the court, the artificiality of artificial flowers resides in the manner of their creation and not in the synthetic nature of their components. An artificial flower is a flower whose body was not created by nature, and it matters not whether it is made from bits and pieces of natural plants. This court has previously held that the insertion of an artificial stem into a natural flower does not create an artificial flower. *Hub Floral Corp.* v. *United States*, 77 Cust. Ct. 21, C.D. 4669, 422 F. Supp. 283 (1976). However, in that case the essential part of the natural flower remained inviolate. Here, there are no complete flowers of natural origin but rather objects which arose from artificial construction.

There is no ambiguity in the term artificial flowers and no reason to refer to legislative history. In any event, plaintiff's references [4] reveal only that the fabrication of artificial flowers from parts of natural plants was not one of the principle concerns of the legislators. There is no indication that such products were not to be considered artificial.

For the above reasons, the correctness of the classification is apparent and it is clear that plaintiff's motion for summary judgment must be denied at the same time as defendant's cross-motion must be granted. It is therefore

ORDERED, that plaintiff's motion for summary judgment be, and hereby is, denied, and it is further

ORDERED, that defendant's cross-motion for summary judgment be, and hereby is, granted, and it is further

ORDERED, ADJUDGED AND DECREED, that the liquidated assessment of duties be, and hereby is, affirmed, that plaintiff's claims be, and hereby are, overruled, and that this action be dismissed.

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[1] Artificial flowers, trees, foliage, fruits, vegetables, grasses, or grains, parts of the foregoing, and articles made of the foregoing (except articles provided for in item 748.15 or 748.40 of this subpart):

* * * * * * *

Other ---------- 42.5% ad val.

[2] Grains, grasses, lichens, mosses, and other natural plants, all the foregoing, and parts thereof, dried, bleached, colored, or chemically treated, suitable for bouquets, wreaths, or other ornamental use:

Dried or bleached ---------- Free

[3] Cut natural flowers, dried, bleached, colored, or chemically treated ---------- 5% ad val.

[4] "Summaries of Tariff Information" (1948), vol. 15, part 2, pp. 76, 79; "Summary of Tariff Information" (1929), schedule 14, p. 1976.

313-579 O - 79 - 2

Decisions of the United States Customs Court

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, *February 11, 1980.*

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

ROBERT E. CHASEN,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P80/24	Rao, J. February 8, 1980	Phono Sonic Radio Corp.	78-8-01461	Item 678.50 5%	Item 678.50 Free of duty under GSP, by virtue of Ex. Order No. 11906 of 2/27/76	Agreed statement of facts	New York AM/FM/MPX with 8-track tape player chassis; product of eligible beneficiary country

Decisions of the United States Customs Court

Abstracts

Abstracted Reappraisement Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R80/6	Rao, J. February 8, 1980	YKK Zipper Co., Inc., Yoshida International, Inc.	77-10-04066	United States value	Equal to invoiced unit prices, net, packed	Agreed statement of facts	New York Zippers and/or zipper parts classified under item 745.70, 745.72 or 745.74
R80/7	Rao, J. February 8, 1980	Yoshida International, Inc.	76-5-01320	Constructed value	Equal to invoiced unit prices plus 8.5%, net, packed	Agreed statement of facts	New York Zippers and/or zipper parts classified under item 745.70, 745.72 or 745.74
R80/8	Ford, J. February 8, 1980	Mitsui & Co.	R68/17314	United States value	F.o.b. unit invoice prices plus 50%	Agreed statement of facts	New York Electron receiving tubes

International Trade Commission Notices

Investigations by the U.S. International Trade Commission

DEPARTMENT OF THE TREASURY

The appended notices relating to investigations by the U.S. International Trade Commission are published for the information of Customs officers and others concerned.

R. E. CHASEN,
Commissioner of Customs.

[19 CFR 207.40]

Investigation Nos. 701–TA–4 (Final) and 701–TA–5 (Final)

TAPS, COCKS, VALVES, AND SIMILAR DEVICES, AND PARTS THEREOF FROM ITALY AND JAPAN

Notice of Termination of Investigations and Cancellation of Hearing

AGENCY: U.S. International Trade Commission.

ACTION: Termination of the two captioned investigations under section 704 of the Tariff Act of 1930.

EFFECTIVE DATE: February 12, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. John MacHatton, Office of Investigations; telephone No. 202–523–0439.

SUPPLEMENTARY INFORMATION: By notice issued January 10, 1980, and published in the Federal Register (45 F.R. 3400 (January 17, 1980)), the Commission instituted the subject investigations to determine whether with respect to the articles involved an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of the subsidized imported merchandise. A public hearing was scheduled, on a tentative basis,

to be held at the International Trade Commission Building, on April 2, 1980.

On February 4, 1980, the Commission received a letter from counsel for the original petitioner for the countervailing duty investigations. The text of that letter is reproduced below.

JANUARY 31, 1980.

MRS. CATHERINE BEDELL,
Chairman, U.S. International Trade Commission,
Washington, D.C.

DEAR MADAM CHAIRMAN: I am writing to inform you on behalf of the Valve Manufacturers Association that the Valve Manufacturers, petitioners in a countervailing duty case against Japan and Italy, wish to withdraw their petition. I request, as a result, that the International Trade Commission accept this withdrawal and notify all companies who have received questionnaires of the withdrawal. Thank you.

Sincerely,

DAVID A. HARTQUIST,
Counsel, Valve Manufacturers Association.

The legal authority for a request to withdraw a petition for a countervailing duty investigation and the legal authority for the Commission to terminate an investigation in response to a request to withdraw the petition are found in section 704 of the Tariff Act of 1930. The only restriction on the Commission's authority to terminate is that all parties to the investigation must be notified of the termination. In the instant case only the petitioners have appeared as parties before the Commission. For these reasons the Commission is granting the request and terminating these investigations. In addition to notifying interested persons who have not appeared before the agency, the Commission is notifying the Department of Commerce of its action in these cases.

By order of the Commission.

Issued: February 13, 1980.

KENNETH R. MASON,
Secretary.

[332–73]

Notice of Release for Public Comment of Provisionally Adopted Chapters of the Harmonized Commodity Description and Coding System

AGENCY: U.S. International Trade Commission.

ACTION: Release for public comment, pursuant to Commission investigation No. 332–73, under the authority of section 332(g) of

the Tariff Act of 1930, as amended, of drafts of the following chapters of the Harmonized Commodity Description and Coding System as provisionally adopted by the Harmonized System Committee and the Nomenclature Committee of the Customs Cooperation Council.

Chapter 1: Live animals; animal products.
Chapter 2: Meat and edible meat offal.
Chapter 3: Fish, crustaceans, and molluscs.
Chapter 5: Products of animal origin, not elsewhere specified or included.
Chapter 6: Live trees and other plants; bulbs, roots, and the like; cut flowers and ornamental foliage.
Chapter 7: Edible vegetables and certain roots and tubers.
Chapter 8: Edible fruit and nuts; peel of melons or citrus fruits.
Chapter 9: Coffee, tea, maté, and spices.
Chapter 10: Cereals.
Chapter 11: Products of the milling industry; malt and starches; gluten; inulin.
Chapter 13: Lacs; gums, resins, and other vegetables saps and extracts.
Chapter 14: Vegetable plaiting materials; vegetable products not elsewhere specified or included.
Chapter 15: Animal and vegetable fats and oils and their cleavage products; prepared edible fats; animal and vegetable waxes.
Chapter 16: Preparations of meat, of fish, of crustaceans or molluscs.
Chapter 17: Sugars and sugar confectionery.
Chapter 20: Preparations of vegetables, fruit, nuts, or other parts of plants.
Chapter 24: Tobacco and manufactured tobacco substitutes.
Chapter 25: Salt; sulphur; earth and stone; plastering materials; lime and cement.
Chapter 26: Ores, slag, and ash.
Chapter 28: Inorganic chemicals; organic and inorganic compounds of precious metals, of rare Earth metals, of radioactive elements, and of isotopes.
Chapter 29: Organic chemicals.
Chapter 30: Pharmaceutical products.
Chapter 33: Essential oils and resinoids; perfumery, cosmetics, and toilet preparations.
Chapter 34: Soap, organic, surface-active agents, washing preparations, lubricating preparations, artificial waxes, prepared waxes, polishing and scouring preparations, candles and similar articles, modelling pastes, and "dental waxes."

Chapter 41: Raw hides and skins (other than furskins) and leather.
Chapter 43: Furskins and artificial fur; manufactures thereof.
Chapter 44: Wood and articles of wood; wood charcoal.
Chapter 45: Cork and articles of cork.
Chapter 46: Manufactures of straw, of esparto, and of other plaiting materials; basketware and wickerwork.
Chapter 47: Pulp of wood or of other fibrous cellulosic material; waste and scrap of paper or paperboard.
Chaper 48: Paper and paperboard; articles of paper pulp, of paper, or of paperboard.
Chapter 49: Printed books, newspapers, pictures, and other products of the printing industry; manuscripts, typescripts, and plans.
Chapter 64: Footwear, gaiters, and the like; parts of such articles.
Chapter 65: Headgear and parts thereof.
Chapter 66: Umbrellas, sun umbrellas, walking sticks, seat sticks, whips, riding crops, and parts thereof.
Chapter 67: Prepared feathers and down and articles made of feathers or of down; artificial flowers; articles of human hair.
Chapter 68: Articles of stone, of plaster, of cement, of asbestos, of mica, and of similar materials.
Chapter 69: Ceramic products.
Chapter 70: Glass and glassware.
Chapter 71: Natural or cultured pearls, precious or semiprecious stones, precious metals, metals clad with precious metals, and articles thereof; imitation jewelery; coin.
Chapter 74: Copper and articles thereof.
Chapter 75: Nickel and articles thereof.
Chapter 76: Aluminum and articles thereof.
Chapter 78: Lead and articles thereof.
Chapter 79: Zinc and articles thereof.
Chapter 80: Tin and articles thereof.
Chapter 81: Other base metals; cermets; articles thereof.
Chapter 82: Tools, implements, cutlery, spoons, and forks, of base metal; parts thereof.

WRITTEN SUBMISSIONS: Parties wishing to submit written comments should do so by July 1, 1980.

HEARING: Parties desiring the Commission to hold a hearing on these draft chapters of the Harmonized Code should contact the Secretary of the Commission by April 1, 1980, and show good cause for holding a hearing.

COPIES OF DOCUMENTS: Copies of the chapters which are the subject of this notice are available for public inspection at the offices of the Commission, 701 E Street NW., Washington, D.C. 20436, or at 6 World Trade Center, New York, N.Y. 10048. The Commission will also send copies to interested parties upon request.

FOR FURTHER INFORMATION CONTACT: Eugene A. Rosengarden, Director, Office of Nomenclature, Valuation and Related Activities, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436; telephone 202–523–0370.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to obtain the comments and views of interested parties with respect to the above-mentioned provisionally adopted chapters of the Harmonized Commodity Description and Coding System.

This notice is being issued pursuant to Commission investigation No. 332–73, instituted on January 31, 1975 (40 F.R. 6329), under section 332 (g) of the Tariff Act of 1930. The investigation was initiated in accordance with section 608(c) of the Trade Act of 1974, which provides, in part, that the Commission shall institute an investigation which would provide the basis for—

> (2) full and immediate participation by the U.S. International Trade Commission in the U.S. contribution to technical work of the Harmonized Systems [sic] Committee under the Customs Cooperation Council to assure the recognition of the needs of the U.S. business community in the development of a Harmonized Code reflecting sound principles of commodity identification and specification and modern producing methods and trading practices . . . .

The Harmonized Commodity Description and Coding System (Harmonized Code) is being developed by the Customs Cooperation Council (CCC), an 80-member international organization with headquarters in Brussels, as an international commodity classification system which will be adaptable for modernized customs tariff nomenclature purposes and for recording, handling, and reporting of transactions in international trade. The Harmonized Code will be based on, and in many respects will be an extension of, the Customs Cooperation Council Nomenclature (CCCN), formerly known as the Brussels Tariff Nomenclature (BTN).

Currently, the technical team working under auspices of the CCC prepares drafts of the various chapters of the Harmonized Code for consideration by the Harmonized System Committee, which was established in order to develop the code. These drafts are forwarded to the members and observers of the Committee for their review and submission of written comments. The Committee meets three times a year

to consider these drafts and the written comments and presentations of the various delegations. The review of a particular chapter or group of chapters may extend to more than one meeting.

In its public notices of May 4, 1976 (41 F.R. 18716 of May 6, 1976), August 9, 1976 (41 F.R. 34370 of August 13, 1976), December 20, 1976 (41 F.R. 55948 of December 23, 1976), September 1, 1977 (42 F.R. 44852 of September 7, 1977), February 7, 1978 (43 F.R. 5902 of February 10, 1978), October 16, 1978 (43 F.R. 43723 of October 19, 1978), February 14, 1979 (44 F.R. 10435 of February 20, 1979), May 18, 1979 (44 F.R. 29740 of May 22, 1979), and September 5, 1979 (44 F.R. 53112 of September 12, 1979), the Commission identified those chapters which have been considered thus far by the Harmonized System Committee, and the chapters for which a technical team draft has been released.

Following its deliberations on the draft chapters, the Harmonized System Committee forwards recommended texts for the chapters to the Nomenclature Committee. The Nomenclature Committee, which supervises the operations of the Convention on Nomenclature for the Classification of Goods in Customs Tariffs and is responsible for insuring international uniformity in the interpretation and application of the CCCN, reviews the recommended texts for the Harmonized System and returns the draft chapters which it has approved to the Harmonized System Committee. The draft chapters which have thusly been provisionally approved by both committees are then held in abeyance pending final revision session. It is anticipated that the Harmonized System Committee will begin final revision sessions early in 1981.

The draft chapters released for public comment today have been provisionally adopted by the Harmonized System Committee and the Nomenclature Committee according to the above described procedure. As further chapters are adopted the Commission will issue future notices requesting public comment.

In 1971, the Department of the Treasury established an Interagency Advisory Committee on Customs Cooperation Council Matters in order to provide a basis for interested Federal agencies to participate with respect to CCC matters. In order to establish and develop U.S. programs and policies with respect to the Harmonized Code, the interagency committee has instituted procedures which take into account the provisions of section 608(c) of the Trade Act of 1974, which call for the Commission to contribute to the U.S. technical input to the Harmonized System Committee. Under these procedures the Commission is preparing technical comments and proposals on the various chapters of the Harmonized Code for consideration by the interagency

committee in the determination of U.S. positions with respect to the Harmonized Code. In making proposals, the Commission is seeking and taking into consideration the views of trade and industry and other interested parties and of interested Government agencies.

By order of the Commission.

Issued: February 8, 1980.

KENNETH R. MASON,
Secretary.

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U.S. Customs Service

Customs Court

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, $300

POSTAGE AND FEES PAID
DEPARTMENT OF THE TREASURY (CUSTOMS)
(TREAS. 552)

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